

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 879 OF 2024
WITH
INTERIM APPLICATION NO. 3259 OF 2024
IN
CRIMINAL APPEAL NO. 879 OF 2024**

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Krushna Maya Kheloji,
Age : 55 years
R/o : Digi, Koliwada,
Tal. Shriwardhan, Dist. Raigad.
(Alibag Central Prison.) ..Appellant

Versus

The State of Maharashtra
(Through Dighisagari Police Station) ..Respondent

Mr. Anush Shetty i/by Dr. Yug Mohit Chaudhary for the Appellant.
Ms. Gauri Rao, A.P.P, for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 11th SEPTEMBER 2026

JUDGMENT [PER : SARANG V. KOTWAL, J] :-

1. The Appellant has challenged the Judgment and Order dated 21st June 2024 passed by the learned Additional Sessions

Judge, Mangaon, Dist. Raigad, in Sessions Case No. 6 of 2022. The Appellant was convicted for the commission of offence punishable under Section 302 of the Indian Penal Code (for short “IPC) and was sentenced to suffer imprisonment for life and to pay a fine of Rs. 500/- and in default, to suffer rigorous imprisonment for six months. The Appellant was granted set off under Section 428 of the Criminal Procedure Code (for short “CrPC”).

2. Heard, Mr. Anush Shetty, learned Counsel for the Appellant and Ms. Gauri Rao, learned A.P.P, for the Respondent-State.

3. The Prosecution case in brief is as follows :-

The deceased Tukaram Kavale and the Appellant both were working on a boat. The allegations are that the Appellant did not clean the fuel can, there was some mix-up in the chemical, and therefore, the fishing boat stopped working in the middle of the sea, which caused inconvenience to all the fishermen. When they came back, the deceased complained to the owner of the boat. The Appellant was in danger of losing his job. There was a quarrel

between the Appellant and the deceased. It is the prosecution case that, the Appellant went to the house of the deceased, but at that time, the deceased was not in the house. The Appellant issued threats. He returned home. The deceased went to the house of the Appellant. There was a quarrel. The Appellant took a knife from his hut and gave blows of knife to the deceased.

4. PW 8 Police Patil Damodar Govari saw the incident. He went towards both of them. He informed others. The injured Tukaram was taken to the hospital, but he was declared dead. The incident took place in the night between 3rd and 4th November 2021. The FIR was lodged in the morning at 7.53 a.m. at Dighi sagari Police Station vide C.R. No. 49 of 2021. The FIR was lodged by the wife of the deceased i.e. PW 1 Aarati Kavale. The investigation was carried out. Different panchanamas were conducted. The Appellant was arrested. At his instance, his clothes were seized and the murder weapon was recovered from his hut. The articles were sent for chemical analysis. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

5. During trial, the Prosecution examined eight witnesses including the first informant, the eye witness PW 8 Damodar Govari, the panchas, the Medical Officer and the Investigating Officer. The defence of the Appellant was of total denial. The learned Judge relied on the evidence of the eye witness and the first informant. Based on their evidence, he convicted the Appellant. The learned Judge considered whether it could be a lesser offence, but after analysis of the evidence, he came to the conclusion that the offence punishable under Section 302 of the IPC was made out.

6. The FIR was lodged by PW 1 Aarati Kavale, who was the wife of the deceased. She deposed that at the relevant time, she was residing with her husband and children in the house of her sister Vanita (PW-4). Her husband Tukaram was working on the fishing boat of one Kiran Kandekar. The Appellant was her uncle. Her husband had gone on the boat for 4 to 5 days. On 3rd November 2021, he returned at about 8.00 p.m. They had dinner. He informed PW 1 that, he was going to the boat to take down the fishing nets and he left. The Appellant came to their house and

started abusing. He issued threats that he would kill Tukaram. After that, they went to sleep at about 12.15 a.m. In the night, one Kashinath Kavale came to her house and informed her that, the deceased was lying injured in front of the house of the Appellant. PW 1 and her sister went there. They saw that, her husband had suffered injuries on the face, chest and back. Kiran Kandekar informed her that there was a quarrel between the Appellant and the deceased and that the Appellant had inflicted blows with a knife on the deceased. After that, the villagers took the injured Tukaram for medical treatment. He was taken to Shriwardhan, but during treatment he succumbed to injuries. After that, she went to the Police Station and lodged the FIR. It is on record at Exhibit 17.

In the cross-examination, she deposed that there were five to six houses around her sister's house. There were other houses around the house of the Appellant. The Appellant's house was at a distance of 15 to 20 minutes from her sister's house. The Appellant, the deceased and Sudam were working on the boat of Dama Kandekar. She had not specifically mentioned the abuses given by the Appellant. She accepted that she had not informed

anybody that the Appellant had come to her house and abused them. When she went to the spot, the injured was in pain, but he had not told her that the Appellant had assaulted him. Her FIR is produced on record at Exhibit 17.

7. PW 4 Vanita was the sister of PW 1. She deposed that, on 3rd November 2021, at about 9.30 p.m., they went to sleep. PW 1 was residing in a portion of their house. At about 11.45 p.m., Kashinath Kavale and Prakash Govari woke them up and informed them about the incident. PW 4 and PW 1 went to the spot. Tukaram had suffered injuries. The villagers took him to Shriwardhan for treatment.

8. PW 2 Kiran Kandekar was a villager. At about 11.30 p.m. on 3rd November 2021, Police Patil came to his house and informed him about the incident. PW 2 and others went to the spot. One Mrutunjay Govari was asked to bring his vehicle. PW 1 and PW 4 came to the spot. He informed them about the incident. After that the injured was taken to the hospital.

In the cross-examination, he accepted that there were

other houses around the house of the Appellant. The house of the Police Patil PW 8 was about 40 minutes away from the Appellant's house. When they went to the spot, the Appellant was standing outside his hut and about 20 to 25 people were present there. He himself had not seen the incident.

9. PW 3 Mrutunjay Govari gave the deposition similar to that of PW 2. He had taken his vehicle, and the injured was taken to the hospital in his car.

10. PW 5 Dinesh Girhane was a pancha for the spot panchnama, which is produced on record at Exhibit 26. There is hardly any dispute about the spot of incident. He was also a pancha in whose presence the Appellant had made a statement that he would show the place where he had kept the murder weapon and the clothes. The memorandum statement and the panchnama are produced on record at Exhibit 27 and 28, respectively.

The recovery was effected on 5th November 2021. The murder weapon and the clothes were seized at the instance of the

Appellant from his hut.

11. PW 6 Dr. Diksha Sing had conducted the postmortem examination. She found the following injuries :-

- 1. Penetrating stab wound of size 4X2 cm X 10 cm, 4cm below medial 1/3 of left clavicle, directed posteriorly, laterally, and superiorly toward left shoulder; age of injuries was 6 hours due to sharp weapon, puncturing upper lobe of left lung.*
- 2. Penetrating stab wound of 4X1X14 cm, 1 cm medial to midpoint of medial border of scapula of right side, directed anteriorly puncturing lower lobe of right lung, within 6 hours cause due to sharp weapon.*
- 3. Incised wound of size 4X1 cm X 2 cm muscle deep along the spine of left side scapula, 12 cm from acromion directed anteriorly within 6 hours cause by sharp weapon.*
- 4. Incised wound of size 7X1X2 cm cutting the oral mucosa inferiorly, present 5 cm inferior to inferior left orbital rim and extending up to left commissure of lip, exposing teeth, within 6 hours cause by sharp weapon. All injuries where antemortem one.*

In her opinion the cause of death was due to “haemorrhagic shock due to multiple penetrating injuries using sharp weapon”. The Postmortem Notes are produced on record at Exhibit 35.

12. PW 7 API Sandip Poman had conducted the investigation. He deposed about conducting the Inquest

Panchnama, sending the dead body for postmortem examination, conducting the Spot Panchnama, conducting the Recovery Panchnama after arresting the Appellant, and recording the statements of witnesses. He had filed the charge-sheet.

13. The most important witness in this case is PW 8 Damodar Govari. He was the eye witness to the incident. He was the Police Patil of Dighi village. He knew the Appellant and the deceased. He deposed that on 3rd November 2021, at about 11.30 p.m., he was sitting on the Ota of his house. At that time, the Accused was shouting abuses. The Appellant's house was at a distance of 15 to 20 ft. from PW 8's house. PW 8 went towards the house of the Appellant. He saw the Appellant assaulting the deceased with a knife. When PW 8 reached there, the Appellant ran towards his hut. He saw Tukaram lying injured. He went to the house of the Appellant and asked him as to why he had assaulted Tukaram. At that time, the Appellant had told him that Tukaram had complained to their employer Damodar Kandekar that the Appellant had not cleaned chemical cans. The others put diesel in those cans, which was used in the boat, and as a result, the boat

stopped moving in the sea. The employer was thinking of removing the Appellant from his job because of this reason. On getting angry, the Appellant had assaulted the deceased. This is the story narrated by the Appellant to PW 8. This is in the nature of an extra-judicial confession. PW 8 immediately informed Dighi sagari Police Station regarding the same. He then deposed as to how PW 1 and PW 4 were informed and as to how the injured was moved to the hospital. His statement was recorded under Section 164 of CrPC. There is hardly any effective cross-examination of this witness.

This, in short, is the evidence led by the prosecution.

14. Mr. Anush Shetty, learned Counsel appearing for the Appellant, at the outset submitted that he is not disputing the incident and he is not disputing the evidence given by the eye witness PW 8. His only contention is that the offence would not fall within the definition of murder. It would be a lesser offence. He submitted that the Appellant's act would fall within Exception 4 to Section 300 of the IPC. He submitted that at the highest, the

offence would be that of culpable homicide not amounting to murder and the punishment to be attracted under Part II of Section 304 of IPC. He submitted that at the highest, only the requisite knowledge under Part II of Section 304 of the IPC can be attributed to the Appellant. In support of his contention, he submitted that there is no reliable evidence to show that the Appellant had threatened the deceased. PW 1's evidence is not supported by PW 4. Both of them were present in the same house. Therefore, there is no previous quarrel or abuses attributed to the Appellant. There were no previous threats issued by the Appellant. The incident had occurred on the spur of the moment. The deceased had gone to the house of the Appellant. Thus, the deceased himself was the aggressor. Considering all these facts, it is clear that it is not an offence of murder.

He further submitted that the conviction be altered to culpable homicide not amounting to murder and, accordingly, the sentence also be reduced to 5 years. He submitted that the Appellant is about 60 years of age and is in custody for about 5 years.

15. Ms. Gauri Rao, learned APP appearing for the Respondent-State, on the other hand, submitted that the offence would squarely fall within the meaning of murder as defined under Section 300 of IPC. She submitted that the nature of the weapon and the manner of assault would indicate that the Appellant had intentionally and with premeditation assaulted the deceased. She therefore submitted that it would be an offence of murder and not culpable homicide not amounting to murder.

16. We have considered these submissions. As rightly submitted by the learned Counsel for the Appellant, the evidence of PW 1 is not fully supported by the evidence of PW 4. Both of them were sisters and were residing in the same house. Therefore, the evidence of PW 1 that the Appellant came to their house and shouted abuses and threats against the deceased is not supported by PW 4. Even according to PW 1, at that time, the deceased Tukaram was not in the house. That story is not corroborated by PW 4, who has deposed that they went to sleep at 9.30 p.m. in the night itself. There is no reference made by PW 4 to any such threats or shouts uttered by the Appellant. The spot of the incident

is not in dispute. The other two witnesses had not seen the incident. Therefore, the only material evidence in this case is the evidence of PW 8. From the evidence, it is quite clear that the deceased had gone to the house of the Appellant. He had gone there around midnight. The deceased had no reason to go to the house of the Appellant and start a quarrel. This shows that the incident had taken place as a result of sudden a quarrel on the spur of the moment. It cannot be said that the Appellant had acted with premeditation and preparation to commit this offence. PW 8 had only heard the shouts of the Appellant and had seen the incident of assault. But he had not seen the incident from the beginning. He was not aware of the genesis of the incident. Exception 4 to Section 300 of IPC reads thus :-

Exception 4 —

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

Explanation:

“It is immaterial in such cases which party offers the provocation or commits the first assault.”

17. In this case, the evidence shows that the offence was committed without premeditation in a sudden fight, upon a sudden quarrel. The learned Judge has also considered this aspect seriously, but he concluded that the Appellant had acted in a cruel manner. To consider whether the Appellant had taken any undue advantage or acted in a cruel or unusual manner, it is necessary to consider the medical evidence. The evidence of PW 6 Dr. Diksha Sing shows that, the deceased had suffered four injuries. Two injuries proved to be vital. They had cut the lobes of the lung. Out of them, one injury was on the back. There was one injury on the upper left side of the chest. The blow was not directed towards the heart. It was upwards cutting the lobe of lung on the upper side. The injury on the back had similarly cut the lower lobe of the right lung. There was one more injury on the face. Thus, it can be seen that the Appellant had ample opportunity to give blows with the knife on the chest, stomach, abdomen or other vital parts. One of the blows was given on the back side. One blow, however, was given on the upper part of the left chest. In this view of the matter, we find force in the submissions of learned Counsel for the

Appellant that the case would fall within Exception 4 to Section 300.

However, we are unable to accept the submissions of the learned Counsel for the Appellant that it could be an offence punishable under Part II of Section 304. Looking at the depth of the injuries, it cannot be said that, at the highest, the Appellant can be attributed knowledge and not the intention. The very fact that one of the blows was given on the upper part of the chest and both the blows were quite deep makes it clear that, the Appellant entertained the requisite intention in giving those blows. Therefore, the offence will be more serious than the one under Part II of Section 304. In our opinion, the offence would fall within Part I of Section 304 of IPC. Section 304 of the IPC reads thus :-

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.

Hence, we are of the opinion that the Prosecution has proved that the Appellant had committed the offence punishable under Part I of Section 304 of the IPC. To that extent, the Order of conviction is required to be altered. In this view of the matter, we seriously considered as to what ought to be the quantum of sentence. Having considered the entire circumstances and, in particular, taking into account the fact that there were two deep blows inflicted by the Appellant, rigorous imprisonment for 10 years would meet the ends of justice. Hence, the following Order :-

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Judgment and Order dated 21st June 2024 passed by the Additional Sessions Judge, Mangaon, Dist. Raigad, in Sessions Case No. 6 of 2022 is modified.
- (iii) The conviction under Section 302 of IPC and sentence for life imprisonment are set aside. Instead, the Appellant is convicted for

commission of offence punishable under Section 304(I) of IPC and is sentenced to suffer rigorous imprisonment for 10 years.

- (iv) The sentence of fine of Rs. 500/- remains unaltered. In default of payment of fine, the Appellant shall undergo rigorous imprisonment for 6 months.
- (v) The Appellant is entitled for set off under Section 428 of CrPC.
- (vi) The Appeal is accordingly disposed of.
- (vii) With the disposal of the Appeal, the connected Application is also disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)