

Sagar Magar

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

CRIMINAL APPEAL NO. 1311 OF 2023

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Machindra Uttam Kolhe
Age:- 58 Years, Occ. Retired,
R/at:- Survey No. 7/8/2,
CTS No. 947, Dattaprasad Niwas,
Tapovan Road, Opp. Pushpanjali,
Pimprigaon, Pune.

... Appellant

Versus

1. State of Maharashtra.
Through Shikrapur Police Station,
District Pune,

2. Mahendra @ Mahesh Vishnu Kolhe,
Age :- 40 Years, Occ :- Agriculturist,
R/at:- Kolhe Mal, Talegaon Dhamdhere,
Tal, :- Shirur, Dist.:- Pune.

3. Sadashiv Vithoba Kolhe,
Age :- 77 Years, Occ. :- Agriculturist,
R/at:- Kolhe Mal, Talegaon Dhamdhere,
Tal.:- Shirur, Dist.:- Pune.

... Respondents

Mr. Amey Deshpande for the Appellant.
Ms. Gauri S. Rao, APP for the Respondent No.1-State.
Mr. Satyavrat Joshi a/w Mr. Samay Pawar for the Respondent Nos.
2 and 3.

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

DATE : 25 AUGUST 2026

JUDGMENT (PER SARANG V. KOTWAL, J.) :-

1) The Appellant has preferred this Appeal under Section 372 of the Code of Criminal Procedure (for short, CrPC). The Appellant is the son of the deceased Uttam Kolhe. The Respondent Nos. 2 and 3 were the original accused Nos. 1 and 2 in Sessions Case No. 606 of 2015 before the Additional Sessions Judge, Pune. The learned Judge vide the Judgment and Order dated 4th August 2023 acquitted both of them from the charges of commission of offence punishable under Section 304 read with 34 of the Indian Penal Code (for short, IPC). Being aggrieved, the Appellant has preferred the present appeal as an aggrieved person because his father had died in the incident.

2) Heard Mr. Amey Deshpande, learned Counsel for the Appellant, Ms. Gauri Rao, learned APP for the Respondent No. 1-State and Mr. Satyavrat Joshi with Mr. Samay Pawar, learned Counsel for the Respondent Nos. 2 and 3.

3) The prosecution case in brief is as follows:-

The accused and the deceased were related and they were from the same village. They had their agricultural land adjacent to each other. The incident had occurred because of some petty quarrel regarding the responsibility to cut a neem tree which had grown on the common boundary between the two agricultural fields. There was a quarrel between the two families. The deceased Uttam Kolhe tried to intervene. There are allegations that the Respondent No. 3 Sadashiv Kolhe (Original Accused No. 2) pushed him because of which Uttam Kolhe fell down. He was motionless. He was taken to hospital. He was declared dead. On this basis, offence was registered at Shikrapur Police Station vide C.R. No. 96 of 2015. The incident occurred at about 7.00 a.m. on 31st March 2015 and the FIR was lodged at 12.30 p.m. on the same day. The accused No. 1 Mahendra was arrested during the course of the investigation. The Accused No. 2 Sadashiv Kolhe had obtained anticipatory bail. The dead body was sent for post mortem examination. The cause of death was mentioned as 'fracture of coronary artery rupture due to hypertension (intrapericardial)'.

The FIR was lodged under Section 304 of the IPC. After completion of the investigation, the chargesheet was filed and the case was committed to the Court of Session. The charge was framed under Section 304 read with 34 of the IPC.

During trial, the prosecution examined five witnesses, including two eye witnesses, two medical officers and the Investigating Officer. The defence of both the accused was of total denial. In addition, it was the case that the deceased had died due to heart attack in his own house and, taking advantage of the situation, this false case was lodged against the accused. The learned Judge, considered the evidence and from the record reached the conclusion that there was neither intention nor knowledge to commit the offence resulting in the death of deceased Uttam Kolhe. It was further observed that no offence was made out. Hence, both of them were acquitted. The Appellant has challenged the said finding and judgment before this Court.

4) There were two eye witnesses examined by the prosecution. PW 1, Subhash Kolhe, had lodged the FIR. He

deposed that, the deceased Uttam Kolhe was his paternal uncle. He was residing opposite to his house. Uttam was residing with his family members. PW 1 and his family were cultivating their agricultural land. The land of the accused Nos. 1 and 2 was adjacent to their land. There was a common boundary between their land. On 31st March 2015, PW 1 was standing near his cattle shed. The Accused No. 1 Mahendra came there. He asked PW 1 to cut the branch of the neem tree which was in front of his house. PW 1 suggested to the Accused No. 1 that they should call the Government Surveyor for measurement and, if it was decided that the tree stood in his area, then he would cut the branch, but if it was in the land of the Accused No. 1, he should cut the tree. Accused No. 1 did not listen. He started quarreling. He pushed PW 1 on the ground. PW 1's wife and uncle Uttam Kolhe came there on hearing the noise. Accused No. 2 Sadashiv also came there. Uttam Kolhe told them not to quarrel. PW 1 further deposed that the Accused No. 2 Sadashiv caught Uttam's collar and gave kicks and fist blows. He pushed him. Uttam fell on the ground. PW 1 further deposed that Uttam lay unconscious on the ground. PW 1's

wife, son and daughter-in-law came there and took Uttam Kolhe to Dr. Kadam's dispensary in the tempo of one Jalindar. The doctor examined him and declared him dead. After that, PW 1 lodged this complaint. The FIR is produced on record at Exh. 16.

In the cross-examination, he was asked about their relation and it was brought on record that the first informant's family, the deceased's family and the accused's family, were all are related. The neem tree was standing at that spot since ten to eleven years and nobody ever attempted to cut it. He accepted that appropriate permission is necessary to cut the tree. He deposed that Uttam Kolhe was about Seventy-five to Eighty years of age, but he was not ailing. Some omissions from his FIR were put to him. It was not explained as to why those statements were missing from his FIR. Those omissions are proved by the defence through the cross-examination of the Investigating Officer who had registered the FIR. The FIR is produced on record as Exh. 16. There is no mention in the FIR that Uttam Kolhe was assaulted with kicks and fist blows. There is also reference that the Accused No. 2 Sadashiv had pushed Uttam on one side, because of which

Uttam Kolhe fell down.

5) PW 2, Sanjeevani Kolhe, was the other eye witness examined by the prosecution. She accepted that, the accused were relatives. On 31st March 2015 at about 7.00 a.m. she was cooking in the kitchen. Her husband Subhash (PW 1) was outside the house. Accused No. 1 Mahesh came there and gave shouts for PW 2 to come out of the house. He told her that there was some obstruction on his side of the boundary because of the stones on PW 2's boundary. He also asked to cut the neem tree standing on the boundary. He caught her husband and pushed him on the ground. He caught her wrist, slapped her and pushed her. Uttam Kolhe was the brother of her father-in-law and had come there. Accused No. 2 Sadashiv followed him, who held Uttam's collar and pushed him. Because of that Uttam fell on the ground. He was motionless. PW 2 and others took him to Dr. Kadam's hospital, where he was declared dead.

In the cross-examination, she accepted that there was no dispute regarding cultivation of the lands. She accepted that all

of them were residing in the respective houses peacefully. The tree was standing since long. At the time of the incident, Uttam was 80 years old. She did not know whether he was suffering from blood pressure. She accepted that Uttam Kolhe was taken to the hospital in the tempo of one Jalindar, who was brother of the Accused No. 1 Mahesh and nephew of the Accused No. 2 Sadashiv.

6) PW 3, Dr. Laxman Kadam, had examined Uttam and had declared him dead. In his cross-examination, he stated that at Uttam's age, the body becomes weak and if a patient is suffering from blood pressure, due to high blood pressure such situation could occur.

7) PW 4, Dr. Deepak Dhavale, had conducted the post mortem examination at around 12.30 p.m. on 31st March 2015. There was haemorrhage all over the under scalp. The final cause of death was mentioned as 'coronary artery rupture due to hypertension (intrapericardial)'. The post mortem examination report is produced on record at Exh. 26. The post mortem report was not disputed by the defence. There is no external injury

mentioned in the post mortem report. There was only internal injury mentioned. PW 4 further deposed that, if there was a quarrel, there was a possibility of hypertension. If a person collapsed due to anxiety in the quarrel, then there was a possibility of hypertension, haemorrhage and rupture. In the cross-examination, he accepted that the opinion which he had given was correct in respect of natural death.

8) PW 6, PI. Shrikant Kankale, was the Investigating Officer. He deposed about the registration of the FIR. He had conducted the spot panchanama, and he had recorded the statements of witnesses. He arrested the Accused No. 1 on 6th April 2015. Accused No. 2 had obtained anticipatory bail. He had sent the articles for CA analysis. In the cross-examination, he proved the omissions from the FIR as mentioned earlier.

This in short is the evidence led by the prosecution.

9) Learned Counsel for the Appellant submitted that, though there may not be any intention to commit the offence of culpable homicide, the accused definitely had knowledge that

because of this act and because of the old age of the deceased, he was likely to suffer death. He submitted that, if it is held that the offence of culpable homicide is not made out against the Accused, then at least offence punishable under Sections 323 and 335 of the IPC are made out. He submitted that the learned Judge committed error in acquitting the accused. The finding is perverse and, therefore, this Court needs to interfere. He submitted that the judgment of acquittal is required to be set aside.

10) Learned APP supported the contention of learned Counsel for the Appellant. However, she conceded that the State has not preferred any appeal.

11) Mr. Samay Pawar and Shri. Joshi, learned Counsel for Respondent Nos. 2 and 3, submitted that, after reading the evidence as a whole, no offence is made out. There are major omissions from the police statement affecting the deposition of PW 1. They submitted that there could not be any intention or even knowledge attributable to either of the accused. The FIR did not mention that Accused No. 2 gave kicks and fist blows to the

deceased.

12) We have considered these submissions and perused the impugned judgment. We do not find any perversity in the judgment passed by the learned Trial Judge. He has taken a possible view. We do not find infirmity wherein this Court should interfere and reverse the finding of acquittal.

13) The medical evidence in the present case makes it clear that the deceased had died due to rupture of artery. The medical officer has accepted that it could be in the nature of natural death. It is quite clear that there were no external injuries. The haemorrhage inside the scalp was a result of rupture of the artery, which could be caused due to anxiety and hypertension as deposed by the Medical Officer. At the highest, it can be said that there was a quarrel between the two families. That was the reason why the deceased could have suffered from hypertension, resulting in rupture of artery. Significantly, there is no external injury. Merely giving a push without the requisite intention or knowledge can hardly attract ingredients of any of the offences. The act does not

fulfil any of the ingredients of Section 299 of IPC which defines culpable homicide. Even otherwise, the act attributed to the Accused No. 2 does not even attract the ingredients of Sections 323 and 325 of the IPC as was argued by the learned Counsel for the Appellant. The Accused No. 1 is not attributed any role. He had picked up a quarrel with PW 1 and 2 for reason of responsibility to cut the tree. There is no allegation that he had touched the deceased. It is also significant that the deceased was taken to the hospital in the tempo of Accused No. 1's brother and the nephew of the Accused No. 2.

14) Considering all these aspects, we do not find any merit in the appeal. The Appeal is accordingly dismissed.

15) The bail bonds executed by the Respondent Nos. 2 and 3 stand discharged.

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