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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 639 OF 2015**

Sunil Devnath Mhase	]	
C-6968 presently lodged in	]	
Nashik Central Jail, Nashik	]	..Appellant
		[Ori. Accused No.1]
Vs.		
The State of Maharashtra		]
		..Respondent

....

Mrs. Nasreen Ayubi Advocate appointed for the Appellant
Mrs. A.S. Pai A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI,JJ.**

DATED : JUNE 23, 2015

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original accused no.1 against the judgment and order dated 6.5.2005 passed by the learned 3rd Ad-hoc Additional Sessions Judge, Thane in Sessions Case No. 34 of 2005. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 read with Section 34 of IPC and sentenced him to life imprisonment and fine of Rs.1000/- i/d S.I. for one

month.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Rama was the father of P.W. 1 Vanita. P.W. 1 Vanita is the wife of the present appellant. Original accused no.2 Devnath is the father of the present appellant. Vanita was residing along with her husband, father in law, mother in law and other family members in village Ghodichapada in District Thane.

(ii) The incident occurred on 1.11.2004. On that day at about 6.00 p.m. Vanita's father Rama (deceased) came to the matrimonial house of Vanita. He asked Vanita to bring half bottle of liquor. Thereupon, Vanita told him that she had no money. Thereafter her mother in law brought half bottle of liquor. Then her mother in law, father in law and her father had liquor. Thereafter her husband Sunil (appellant) asked her father Rama to have dinner. Rama then told Sunil that he had incurred expenditure for the delivery of Vanita. Thereupon appellant Sunil and his father Devnath rushed upon the person of Rama. Sunil bit the ear of Rama. It is the prosecution case

that both the accused acted in such manner because they were annoyed on hearing the reply of Vanita's father that he had incurred expenditure for Vanita's delivery. In that quarrel, the appellant assaulted on the head of Rama with a scythe and also assaulted him with a wooden log. At that time, original accused no.2 Devnath i.e. father of the present appellant assaulted on the head of Rama with a stone. Due to this assault, Rama sustained bleeding injuries and fell down on the ground and died. Vanita lodged F.I.R. Thereafter, investigation commenced. After completion of investigation, the charge sheet came to be filed.

3 Charge came to be framed against the appellant-original accused no.1 and Devnath original accused no.2 under Section 302 read with Section 34 of IPC. Both the accused pleaded not guilty to the said charge and claimed to be tried. Their defence is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted both the accused under Section 302 read with Section 34 of IPC.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the prosecution has failed to prove its case under Section 302 read with Section 34 of IPC but has proved offence under Section 304 Part II read with Section 34 of IPC.

5 Original accused no.2 Devnath who is the father of the appellant, preferred Criminal Appeal No. 73 of 2006 against the judgment and order of conviction and sentence imposed on him in this very case. The said appeal was partly allowed by this Court by judgment and order dated 16.7.2012. By the said judgment and order, the conviction of Devnath under Section 302 read with Section 34 of IPC was set aside and instead, he was convicted for the offence punishable under Section 304 part II of IPC and he was sentenced to suffer R.I. for seven years and to pay a fine of Rs.1000/-. The appellant, however, did not prefer any appeal at that stage. Thereafter, the

appellant preferred the present appeal against his conviction and sentence. Looking to the fact that the incident pertains to the year 2004 and the appellant is in custody since long time and the appeal has been preferred after a delay of more than nine years, we decided to take up the appeal itself for final hearing. It may be stated that we have relied upon the record and proceedings which was available in this Court in Criminal Appeal No. 73 of 2006. While allowing Criminal appeal No. 73 of 2006 of the co-accused Devnath, this Court has specifically observed that the incident took place during a sudden quarrel. The relevant observations made in para no.6 of the said judgment, are reproduced below:

".....Accused No.1 / her husband invited the deceased to have a dinner and at that time, her father had demanded money from her husband and thereafter there was a sudden quarrel. She has stated that her husband bit the ear of her father; he then assaulted him on his head with scythe and also with wooden log. She has stated that the present appellant assaulted her father with a small stone. From this evidence, it can be seen that there was a sudden fight and on account of quarrel which had taken place in respect of the money which was spent by the deceased on the marriage of his daughter, and

after this quarrel, accused no.1 suddenly assaulted the deceased with a scythe on his head."

6 The conviction of the appellant is based on the evidence of P.W. 1 Vanita who is an eye witness to the incident. She has stated that she was residing along with her husband, father in law, mother in law and other family members in village Ghodichapada in District Thane. She has further stated that the incident occurred on 1.11.2004. On that day at about 6.00 p.m., her father Rama (deceased) came to her matrimonial house. He asked her to bring half bottle of liquor. Thereupon, she told him that she had no money. Thereafter her mother in law brought half bottle of liquor. Then her mother in law, father in law and her father had liquor. Thereafter her husband Sunil (appellant) asked her father Rama to have dinner. Rama then told Sunil that he had incurred expenditure for the delivery of Vanita. Thereupon appellant Sunil and his father Devnath rushed upon the person of Rama. Sunil bit the ear of Rama. She has further stated that both the accused acted in such manner because they were annoyed on hearing the reply of her father that he had incurred expenditure for her delivery. She has further stated that in

that quarrel, the appellant assaulted on the head of Rama with a scythe and also assaulted him with a wooden log. At that time, original accused no.2 Devnath i.e. father of the present appellant assaulted on the head of Rama with a stone. Due to this assault, Rama sustained bleeding injuries and fell down on the ground and died. This evidence of Vanitha clearly shows that the incident occurred during a sudden quarrel which has already been observed by this Court in the judgment and order dated 16.7.2012 filed by the co-accused, relevant portion of which has been reproduced hereinabove. Looking to the fact that the incident took place during a sudden quarrel, we are of the opinion that the benefit of Exception 4 to Section 300 of IPC can be extended to the appellant. Hence, the following order is passed:

ORDER

- (a) The conviction and sentence under Section 302 read with Section 34 imposed on the appellant-original accused no.1 Sunil Devnath Mhase vide judgment and order dated 6.5.2005 passed by the learned III Ad-hoc Additional Sessions Judge, Thane in Sessions Case No. 34 of 2005 is set aside.
- (b) The appellant-original accused no.1 is convicted for

the offence under Section 304 Part-II of IPC and sentenced to R.I. for ten years and to pay a fine of Rs.1000/- in default S.I. for one month.

(c) If the appellant has already undergone the sentence as imposed above, he be released forthwith unless he is required in any other case.

(d) The appeal is partly allowed and is disposed of accordingly.

(e) Office to communicate this order to the appellant and the concerned Jail Superintendent.

(f) We quantify legal fees to be paid to Advocate Mrs. Nasreen Ayubi by the High Court Legal Services Committee at Rs. 5000/-.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]