

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.479 OF 2008
(By accused against conviction)

Vijay Janardan Rane, Age - 45 yrs., R/o.- Opp. Do up Petrol Pump, B.M.C. Garden, Ghaslane, Sane Guruji Marg, Agripada, Mumbai-11. (Presently in custody in Nashik Central Prison, Nashik).	]]]]]]]	... Appellant/ Orig. Accused
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Versus

State of Maharashtra	]	... Respondent
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Mrs. Nasreen Ayubi, Advocate (Appointed) for Appellant/orig.
 accused.

Smt. A. S. Pai, APP for State/Respondent.

<u>CORAM</u>	<u>:-</u>	<u>SMT. V. K. TAHILRAMANI AND</u> <u>SMT. I. K. JAIN, JJ.</u>
<u>DATE</u>	<u>:-</u>	<u>FEBRUARY 26, 2015</u>

ORAL JUDGMENT (PER SMT. V. K. TAHILRAMANI, J.) :-

1. The Appellant/original accused has preferred this appeal against the Judgment and Order dated 05/02/2008 passed by the learned 2nd Ad-hoc Additional Sessions Judge, Sewree, Mumbai, in Sessions Case No.328 of 2007. By the said Judgment and Order, the learned Sessions Judge convicted the Appellant under Section 302 of Indian Penal

Code and sentenced him to life imprisonment and fine of Rs.3,000/-; in default R.I. for one year.

2. The prosecution case briefly stated is as under :

Deceased Ramesh Maru was the brother of PW 2 Jaya. Jaya is the complainant in the present case. Jaya is the wife of the Appellant. Jaya and the Appellant were residing as husband and wife and they had 3 children. One of them was daughter Vinita. Jaya was residing with the Appellant and her 3 children on the footpath in front of petrol pump situated at Sane Guruji Road at Agripada, Mumbai. Deceased Ramesh was also residing with the Appellant and Jaya. The incident occurred on 25/12/2006 at about 11.30 p.m. Vinita who is the daughter of PW 2 Jaya and the Appellant, came and made a complaint against deceased Ramesh that he was teasing her. Thereupon the Appellant started abusing Ramesh. A quarrel took place between the Appellant and Ramesh. The Appellant then lifted a grinding stone and assaulted Ramesh twice on the head. This incident was witnessed by PW 2 Jaya and PW 6 Brijesh. Jaya then lodged

F.I.R. Thereafter investigation commenced. After completion of investigation, charge-sheet came to be filed.

3. Charge came to be framed against the Appellant/original accused under Section 302 of IPC. The Appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the Appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the Appellant as stated in para 1 above, hence, this appeal.

4. We have heard the learned Advocate for the Appellant and the learned APP for the State. We have carefully considered their submissions, the Judgment and Order passed by the learned Additional Sessions Judge and the evidence in this case. After carefully considering the same, for the reasons mentioned hereinbelow, we are of the opinion that the Appellant assaulted Ramesh with a grinding stone on the head and caused his death.

5. The conviction of the Appellant is based on the evidence of two eye witnesses. The eye witnesses are PW 2 Jaya and PW 6 Brijesh. PW 2 Jaya was living with the Appellant and Jaya and the Appellant had 3 children. One of them was a daughter Vinita. Deceased Ramesh was the brother of Jaya. Jaya was residing with the Appellant and her 3 children on the footpath in front of petrol pump situated at Sane Guruji Road at Agripada, Mumbai. Deceased Ramesh was also residing with the Appellant and Jaya. The incident occurred on 25/12/2006 at about 11.30 p.m. PW 2 Jaya has stated that her daughter made a complaint against Jaya's brother Ramesh (deceased) that Ramesh was teasing her. The Appellant then started abusing Ramesh. The Appellant then lifted a grinding stone and assaulted Ramesh twice on the head. Ramesh fell down. Jaya then lodged F.I.R.

6. The second eye witness is PW 6 Brijesh. Brijesh was a taxi driver by profession. He knew the Appellant. Brijesh has stated that on 25/12/2006, the battery of his taxi was not functioning properly, hence he had taken his taxi to

the garage between 11.00 p.m. to 12.00 a.m. At that time, he saw the Appellant was quarreling with his brother-in-law Ramesh i.e. brother of wife of the Appellant. The Appellant then assaulted his brother-in-law Ramesh with a stone on his head. Ramesh fell down. Brijesh has stated that at that time, wife of the Appellant was present at the spot. Thus, the evidence of PW 2 Jaya and PW 6 Brijesh shows that the Appellant assaulted his brother-in-law Ramesh with a grinding stone on the head. Nothing has been elicited in the cross-examination of PW 2 Jaya or PW 6 Brijesh so as to cause us to disbelieve their testimony, hence, we have no hesitation in relying on their testimony.

7. It is the prosecution case that the Appellant assaulted Ramesh with a grinding stone on the head. This is corroborated by the medical evidence. PW 10 Dr.Sukhdeve conducted the post-mortem on the dead body of Ramesh. On external examination, he noticed the following injuries :

- (i) Split lacerated wound of size 6 x 1 cm x bone deep with oozing of blood over right frontal area

of the head,

- (ii) Split lacerated wound over right parieto-temporal region, size 5 x 1 cm x bone deep.

In addition to these two injuries, Dr.Sukhdeve noticed abrasion on the thigh, knee and forehead. On external examination, Dr.Sukhdeve noticed fracture in the head and laceration to the brain of the size 3 x 2 cm with brain haemorrhage. Dr. Sukhdeve further opined that injury nos.(i) and (ii) mentioned above can be caused by stone – Article 1.

8. Mrs. Ayubi, learned Advocate for Appellant, submitted that even if it is accepted that the act of the Appellant of assaulting Ramesh with a grinding stone resulted in his death, the case would not fall under Section 302 of IPC, but it would fall under Section 304 Part II or at the most under Section 304 Part I of IPC. She pointed out that the evidence on record shows that a quarrel was going on between the Appellant and the deceased. This has been deposed about by PW 6 Brijesh. Mrs. Ayubi pointed out that PW 6 Brijesh has stated that when he was taking his taxi to

the garage, at that time, he saw the Appellant was quarreling with his brother-in-law Ramesh in front of the petrol pump. The Appellant then assaulted his brother-in-law with a grinding stone on the head. Mrs. Ayubi further pointed out the evidence of PW 6 Brijesh where he has stated that, *"It is not true to say that I did not witness the quarrel. Scuffle was going on between accused and his brother-in-law Ramesh. Wife of accused was standing at the time of quarrel between accused and Ramesh."* Mrs. Ayubi further pointed out that the Appellant gave just two blows to Ramesh. She further pointed out that the entire incident took place because deceased Ramesh had teased the daughter of the Appellant. Due to this, a quarrel took place between the Appellant and the deceased. During this, the Appellant assaulted the deceased on the head with a grinding stone. Mrs. Ayubi further pointed out that the assault was not pre-meditated or pre-planned but it happened on the spur of moment in a fit of anger. Mrs. Ayubi submitted that the fact that the Appellant assaulted the deceased during the course of a sudden quarrel would bring the case under Exception 4 to Section

300 of IPC and would thus be covered by Section 304 Part II or at the most under Section 304 Part I of IPC.

9. Indeed, the evidence on record shows that the incident occurred during a sudden quarrel. The assault was not pre-meditated or pre-planned but it happened on the spur of moment in a fit of anger. The Appellant did not come to the spot armed with a weapon but he picked up the grinding stone which was lying nearby and assaulted the deceased with the grinding stone on the head. Hence, we find much merit in the submission that the case would not fall under Section 302 of IPC but it would fall under Exception 4 to Section 300 of IPC i.e. assault by accused during a sudden quarrel in the heat of passion.

10. To bring the case within Exception 4 to Section 300 of IPC, all the ingredients mentioned in it must be found. It is to be noticed that the word the word 'fight' occurring in Exception 4 to Section 300 of IPC is not defined in IPC. It takes two or more persons to make a fight. Heat of passion

requires that there must be no time for passion to cool down. In this case, the evidence shows that both the parties had worked themselves into a fury on account of the verbal altercation going on between them. The Appellant did not come to the spot armed with a weapon but he assaulted the deceased with a stone taken from the spot. The fact that the Appellant gave only two blows shows that he did not take any undue advantage or acted in a cruel or unusual manner. However, we are not prepared to accede to the submission of Mrs. Ayubi that the case would fall under Section 304 Part II of IPC. In our view, the case would fall under Section 304 Part I of IPC because we are of the opinion that the Appellant did not just have the knowledge that his act is likely to cause death, as contended by Mrs. Ayubi, but, in fact, the Appellant intended to cause the death of Ramesh. We say so on the basis of the weapon used, the part of the body where the injuries were inflicted, the force used while assaulting and the nature of the injuries. The injuries, as seen from the evidence of PW 10 Dr.Sukhdeve, shows that they are serious and grievous in nature. Looking to these facts, we are of the

considered opinion that the case cannot fall under Section 304 Part II of IPC.

11. Considering the evidence on record, we are of the view that Exception 4 to Section 300 of IPC applies to the facts of this case and the appropriate conviction would be under Section 304 Part I of IPC. Hence conviction under Section 302 of IPC is set aside. Instead, the Appellant is convicted under Section 304 Part I of IPC. In our view, custodial sentence of 8 years R.I. and fine of Rs.2,000/- in default S.I. for two months would meet the ends of justice. In case the Appellant has undergone this sentence, he be released forthwith, if not required in any other case.

12. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Mrs. Nasreen Ayubi at Rs.5,000/-.

(SMT. I. K. JAIN, J.)

(SMT. V. K. TAHILRAMANI, J)