

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 140 OF 2013
WITH
CRIMINAL APPEAL NO. 177 OF 2013**

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CRIMINAL APPEAL NO. 140 OF 2013

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| 1. | Manisha w/o. Ravindra Humbe
Age. 25 years, Occ. Agri.,
R/o. Tambe Mala, Mandavgan,
Tq. Shrigonda, Dist. Ahmednagar. | .. | Appellants
[original
accused
Nos.1 & 3] |
| 2. | Nitin Baban Shinde
Age. 30 years, Occ. Agri.,
R/o. Rashin, Tq. Karjat,
Dist. Ahmednagar | | |
- (At present are in jail)

Versus

The State of Maharashtra	..	Respondent
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Mr. R.N. Dhorde, Sr. Counsel i/b. Mr. V.R. Dhorde,
Advocate for the appellants.
Mr. M.M. Nerlikar, A.P.P. for respondent/State.

**WITH
CRIMINAL APPEAL NO. 177 OF 2013**

Sanjay s/o. Bhagwan Shinde	..	Appellant
Age. 45 years, Occ. Retired from Military		[original
R/o. Mandavgan, Tq. Shrigonda,		accused
Dist. Ahmednagar		No.2]

(At present lodged at Yerawada Central
Prison, Pune, District Pune).

Versus

The State of Maharashtra	..	Respondent
Through Police Station Officer,		
Police Station, Shrigonda,		
Tq. Shrigonda, Dist. Ahmednagar.		

Mr. V.D. Sapkal, Advocate for the appellant.
Mr. M.M. Nerlikar, A.P.P. for respondent/State.

CORAM	: A.V.NIRGUDE & V.L.ACHLIYA, JJ.
RESERVED ON	: 15.06.2016
PRONOUNCED ON	: 01.09.2016

ORAL JUDGMENT [PER : A.V. NIRGUDE, J.] :-

1. Both these appeals arise from judgment and order in Sessions Case No.286 of 2010 delivered by the learned Additional Sessions Judge, Ahmednagar on 25.02.2013. The

appellants in both the appeals were convicted for offence punishable under section 302 read with section 34 of the Indian Penal Code and were sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- each with default clause of three months' rigorous imprisonment. For the sake of convenience, the appellants would be referred to by their designation in the lower Court as accused Nos.1,2 & 3.

2. Criminal Appeal No.140 of 2013 is filed by accused Nos.1 & 3, whereas Criminal appeal No.177 of 2013 is filed by accused No.2. All the three accused were charged for committing murder of Ravindra, who happened to be husband of accused No.1-Manisha. Accused Nos.2 and 3 are cousins of accused No.1.

3. The prosecution case in short is that Ravindra - the victim owned 19 acres land but the same was sold about one year prior to the incident with the help of the accused. The amount of consideration was kept in the

names of the accused. Ravindra-the victim kept demanding the amount for his daily needs and there used to be quarrel between accused on one side and Ravindra on the other over such demand. Because of this dispute on 17th October, 2010, the accused went to the house of Ravindra by about 7 p.m., assaulted him with sticks and caused his death.

4. The prosecution depended on 12 witnesses, out of which P.W.4-Santosh Gadhve, P.W.5-Navnath Raskar, P.W.6-Rajendra Raskar and P.W.9-Kshitija Humbe are the eye witnesses. P.W.10-Dr.Vikas Somwanshi is the Medical Officer, who conducted post-mortem and his deposition has significance, which would be discussed later-on in the judgment.

5. P.W.1-Hirabai is mother of Ravindra, who lodged complaint of the incident on the same day at 11.30 p.m. P.W.1-Hirabai stated that victim Ravindra was her son and was staying in a house consisting of three rooms at Tambe

Mala, which is a land admeasuring 5 acres. Ravindra was staying with his wife accused No.1-Manisha and their children. Accused No.3-Nitin is accused No.1-Manisha's brother and accused No.2-Sanjay is their cousin. Victim Ravindra was a naive person. Accused sold his land to one person from Pune and received a sum of Rs.19 lakhs. They did not give this amount to Ravindra, but kept it with them. Ravindra was demanding the amount from them. On account of this, frequent quarrel took place between Ravindra on one side and the accused on the other. On the day of incident, she went to village Mandavgan, where she received a phone call of one Rajiv Raskar (P.W.6), from which she learnt about the accused had killed her son Ravindra. She went to Ravindra's house. She found in the house chili powder scattered, four sticks and some household articles in broken condition. She also noticed injuries on Ravindra's person. Ravindra was dead. She then went to Shrigonda police station for lodging report. Her report was written down and was read over to her. In her deposition, it is also mentioned that Tambe Mala,

where the incident took place is at about one mile distance from village Mandavgan. She admitted in her cross-examination that after the transaction of sale of 19 acres land, she had lodged complaint to police station against her son Ravindra and also against purchaser who resided at Pune alleging that the land was sold without her permission. She also admitted that the purchasers had filed Civil Suit for possession of the land in Civil Court.

6. P.W.4-Santosh stated that Ravindra's house was adjacent to his house. Ravindra and his wife (accused No.1) and their children were staying in his house in neighbourhood. He also indicated that he was aware that Ravindra had sold land for about Rs.19-20 lakhs and that the amount was kept with the accused. He was aware that Ravindra was demanding the amount for his expenses and yet the accused were not giving him the amount. He added that Ravindra used to tell him that the accused had not given him the amount. On 16th October, 2010, at about

5.30 p.m. he was present in his house. At that time he saw accused riding on motor-cycle came to Ravindra's house. He then heard quarrel. He, therefore, went to Ravindra's house. He noticed that his villagers Navnath, Raju and Gorakh were already standing outside Ravindra's house. He saw that all the accused were beating Ravindra using sticks. Navnath (P.W.5) tried to intervene but one of the accused hurled bottle towards him and prevented his entry in the house. At that time accused No.1 said that no one should intervene, it was their private dispute and she wanted to become widow. Accused continued to beat. Ravindra was trying to come out of the house. Accused threw chili power in his eyes. Ravindra was shouting and seeking help. He was also begging for water. Ravindra lastly came out of the house and fell down in Veranda of the house. Even at that time he was shouting for water. Thereafter, he did not stand up. Seeing this, Raju Raskar (P.W.6) made phone call to one Sunil and asked him to bring Ravindra's mother. Sunil and Ravindra's mother came there. By that time

accused left the spot riding the motor-cycle. One son and daughter of Ravindra were present in the house at the time of incident. In the cross-examination, this witness admitted that he saw this incident from about 50 feet distance. Many other persons had gathered there.

7. P.W.5 is Navnath. He stated that on the day of incident about 6.00 p.m. when he heard noise of quarrel coming from Ravindra's house, he went there. Other witnesses were also present there. He heard noise of beating coming from the house. He saw all the accused beating Ravindra by means of wooden sticks. He asked accused No.2-Sanjay not to assault Ravindra. At that time accused No.1-Manisha said to him that it was their personal dispute and they should not intervene. Accused No.3-Nitin pelted a bottle towards him. P.W.6-Raju Raskar then made a phone call to Sunil. Ravindra came out of the house in injured condition near door on his knees and fell down. Ravindra was crying and was seeking help. Accused then left the spot on motor-cycle.

8. P.W.6-Rajendra Raskar stated that victim Ravindra was his neighbour. On the day of incident he was present in the house. He heard shouts from Ravindra's house. He went there. All the three accused were present there. He saw that they were beating Ravindra by means of wooden stick. He asked accused not to assault Ravindra. He informed about this incident to Sunil on phone. All the accused at the time of incident were telling others that they should not interfere as that was their personal dispute. Lastly Ravindra came out of the house and fell down in Veranda. Thereafter, accused left riding motor-cycle.

9. P.W.10-Dr.Vikas Somvanshi was the Autopsy Surgeon. He stated that on 18th October, 2016, he examined Ravindra's dead body at about 9.30 a.m. He found following injuries on his person.

(1) CLW over left eye brow 2.5 cm x 1 cm x 1 cm blood clot seen.

- (2) CLW over fronto parietal joint region left 3 cm x 2 cm.
- (3) Linear contusion over back right scapular region obliquely placed of size 15 cm x 2 cm.
- (4) Linear contusion over back left scapular region transversely placed of size 10 cm x 3 cm.
- (5) Cris cross shaped contusion seen over back lumber region of back averagely measuring 10 to 15 cm in length and 2 to 3 cm in width.
- (6) Imprint injury below left ear lobule of triangular shape, apex facing each other of size 2 cm x 1 cm.
- (7) Bluish black disconsolation with swollen of left and right upper limbs and shoulder to wrist joint.
- (8) Abrasion over right knee just below pattela 2 cm x 2 cm.
- (9) Abrasion over left knee just below pattela 2 cm x 2 cm.
- (10) Contusion over face leftcheek 3cmx2 cm
- (11) Contusion over chest right side hypochondriac of size 5 cm x 3 cm.
- (12) Linear contusion over abdomen left side of sixe 10 cm x 2 cm.
- (13) Swelling and fracture of right wrist joint.

. He added that he also found internal injury on head corresponding to injury No.2. This was a *hematoma* under scalp measuring 7 cm x 3 cm. There was no fracture to skull. He, however, noticed intra cranial hemorrhage over left side of parietal region measuring 7 cm x 2 cm. He also found substance like chili power near eye of body. Probable cause of death was due to shock due to intra cranial hemorrhage. He, however, did not add that external injury No.2 and corresponding internal intra cranial hemorrhage was sufficient in ordinary course of nature to cause death. In the cross-examination he added that injury No.1,2 to 12 were simple in nature. Injury No.13 was grievous in nature because it was a fracture.

10. Learned Judge of the Trial Court believed the prosecution case and held that the accused committed Ravindra's murder.

11. Learned Counsel for the accused initially argued

that P.W.4-Santosh, P.W.5-Navnath and P.W.6-Rajendra are not worthy of reliance and should be disbelieved. We are, however, not accepting this submission at all. Presence of these three witnesses appears to us quite natural. They were staying in neighbourhood and they went to the spot because of noise of the quarrel. They did not exaggerate while describing the incident which they saw from outside. They admitted that most of the incident took place inside the house. No one could go inside the house and notice details of the incident. All the three witnesses did not attribute specific role to the accused save and except what is stated above, namely, accused No.3-Nitin hurled bottle and accused No.1-Manisha challenged all the outsiders and told them that she was ready to become a widow. So, it is clear from their depositions that the incident mostly took place inside the house. The prosecution could not bring on record as to who delivered blows of sticks on what part of the body. As noticed above, there were as many as 13 injuries. All injuries apparently were caused by the

stick blows. When the victim came out, he was crying for help. He fell down and died after few minutes. Depositions of P.W.4-Santosh, P.W.5-Navnath and P.W.5-Rajendra are believable and trustworthy. We have no doubt in our mind that the author of the injuries suffered by the victim were the accused. They had common intention to assault the deceased by entering inside his house. So, we hold that all the three accused shared common intention to commit this offence of trespass and assault.

12. The moot question is - what was the common intention of the accused? Whether they wanted to simply assault and cause hurt to the victim or whether they were intending to cause his murder? We have noticed the nature of the injuries suffered by the victim. Except injury No.1 & 2, all the injuries are located on non-vital parts of the body. It, therefore, indicates that the accused intended to strike the victim mostly on his back, arms and legs. Injury Nos.1,2,6 and 10 are found on

head and face, out of which except injury No.2, other injuries are simple in nature. Having regard to these injuries, it can be said that the intention of the assailants was to cause simple or at the most grievous injury like fracture to the hand. Only injury that proved fatal was a hit on left *fronto parietal* region of the victim's head. External size of this injury was 3 cm x 2 cm, internal *hematoma* measured 7 cm x 3 cm and intra cranial *hemorrhage* measured 7 cm x 2 cm. The injury though looked squarish from outside, internally it was found to be a elongated one having length of 7 cm. We have no doubt in our mind that this injury was caused by stick like weapon. The assailants landed one blow on victim's left fronto parietal region of the head so as to cause this injury, which proved fatal. But as indicated above, the Medical Officer did not state that this injury though caused death, was also sufficient in ordinary course of nature to cause death. We have no doubt in our mind that, had this injury not been caused to the victim, he would not have died. The question, therefore, is

whether while causing this injury the accused intended to cause death of the victim? Whether they knew that in ordinary course of nature the injury was sufficient to cause death? We find answer to this question in the medical officers deposition. He did not say that the injury was sufficient to cause death. So the answer is in the negative.

13. We are aware that death has occurred in this case. So we have to see the provisions of Sections 299 and 300 of the Indian Penal Code which define terms "Culpable Homicide and Murder".

14. Sections 299 and 300 of the Indian Penal Code are as under :-

"Section 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 it likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

"Section 300 – Murder – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –

2ndly – If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or –

3rdly – If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or –

4thly – If the person committing the act knows that it so imminently dangerous that it must, in all probability, cause death or such bodily injury as it likely to cause death, and commits such act without any excuse or incurring the risk of causing death or such injury as aforesaid."

15. We must read, section 299 and section 300 of the Indian Penal Code keeping them in juxtaposition. Following table puts them in such juxtaposition.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done-	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done-

INTENTION	
(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse or incurring the risk of causing death or such injury as is mentioned above"

16. First question that is required to be answered is - whether the assailants intended to causing death? The answer is in negative because most of the injuries were not fatal. It was only one injury that proved fatal. The second question is whether the assailants

intended of causing such bodily injury as was likely to cause death. The answer to this is also in negative because the head injury was not even found sufficient in ordinary course of nature to cause death. It must be noted that the blow presumably of stick did not cause fracture of skull bone. From outside the size of the injury was small but inside it was bigger. It can, therefore, be said that the blow on the head was not intended to cause such bodily injury that was likely to cause death. The assailants cannot even be attributed to knowledge that the injury which they caused on victim's head was likely to cause his death. The offence of culpable homicide as defined in section 299 has following ingredients:-

1. Causing of death of a human being.
2. Such death must have been caused by doing an act
 - (i) with the intention of causing death;
 - or
 - (ii) with the intention of causing such bodily injury as is likely to cause death; or
 - (iii) with the knowledge that the doer is likely by such act to cause death.

17. Causing death of human being is not sufficient to constitute offence of culpable homicide unless one of the mental status mentioned above is present. The accused, thus, should not be convicted for offence of culpable homicide. They should be convicted for causing grievous injury.

18. We are inclined to accept suggestion of the prosecution that this could be at least a case of causing grievous hurt with deadly weapon. Learned A.P.P. asserted that all the assailants were armed with sticks and they used the sticks quite frequently during the assault and caused several injuries. The sticks if used in this manner in our view would be deadly weapon. The nature of weapon and the manner of its use could at time decide whether it was used as deadly weapon. The question would still arise as to whether stick is a deadly weapon or not. The answer to such question would depend on facts of each case. If the assailants used stick and repeatedly delivers its blow on limbs of the victim, it was but

natural that grievous hurt would be resulted and the manner in which the stick was used would indicate that in that particular incident it was a deadly weapon.

19. In the result, we pass following order :-

O R D E R

(i) Both the Criminal Appeals are partly allowed.

(ii) The judgment and order passed by the learned Additional Sessions Judge, Ahmednagar dated 25.02.2016 in Sessions Case No.286 of 2010 is modified as per following order.

(iii) The conviction of the appellants in both the Criminal Appeals under section 302 read with section 34 of the Indian Penal Code is set aside.

(iv) The appellants in both the Criminal Appeals are convicted for offence punishable under section 326 read with section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for the term which they have already undergone and to pay a fine of Rs.5000/- (Rupees Five Thousand) each, in default, they shall undergo simple imprisonment of six months.

(v) Since the appellants are in jail, they be released from custody, if they are not required in any other case.

[V.L. ACHLIYA, J.]

[A.V.NIRGUDE, J.]