

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 538 OF 2011
(CRI. APPEAL STAMP NO. 423 OF 2011)**

Gunga Natha Patil]
Aged 40 years, Occ: Agri.]
Residing Vadgaon, Taluka Shahuwadi,]
Dist. Kolhapur]
At present in Kolhapur Central Prison].. Appellant
[Ori. Accused]

Vs.

The State of Maharashtra]..Respondent
[Ori. Complainant]

....
Ms. Rohini M. Dandekar Advocate appointed for the Appellant
Mr. H.J. Dedia A.P.P. for the State
....

**CORAM : SMT.V.K.TAHILRAMANI AND
MRS. MRIDULA BHATKAR, JJ.**

DATED : JULY 18, 2016

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

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 28.12.2010 passed by the learned Additional Sessions Judge, Kolhapur in Sessions Case No. 92 of 2007. By the said judgment and order, the learned Sessions Judge convicted the appellant under

Sections 302 and 506 of IPC. For the offence under Section 302 of IPC, the appellant has been sentenced to R.I. for life and fine of Rs.500/- i/d R.I. for one month and for the offence under Section 506 (2) of IPC, the appellant has been sentenced to R.I. for six months.

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

- (i) The appellant is the brother of PW 2 Ananda. Deceased Kamal was the wife of Ananda. Ananda had five brothers i.e. Shankar, Shivaji, Tukaram, Bhagwan and the appellant. Shivaji and Tukaram were residing at Mumbai on account of their service. Ananda was residing with his wife, brother Shankar and his wife and the appellant in the same house but each family was residing separately. Ananda was cultivating the land of Shivaji and Tukaram. This fact was not liked by the appellant and on this count, he used to quarrel with Ananda and used to abuse him since two years prior to the incident.
- (ii) The incident took place on 20.5.2007. In the evening, Ananda was going to the house of his friend Kishan to have dinner. He was accompanied by Kishan and one

Ranga Patil. On the way, the appellant met Ananda and started giving abuses to him. The appellant threatened Ananda that when Ananda returned back, he would show Ananda. When Ananda came back to his house, the appellant started abusing Ananda and his wife Kamal. Quarrel took place between them. There was a stick in the hands of the appellant and the appellant gave a blow with the stick on the back of Ananda. At that time, Kamal the wife of Ananda, came forward. The appellant gave a blow with the stick on the head of Kamal. She fell down. The appellant then gave a blow with the stick on left side of rib of Kamal. Kamal was thereafter taken to the hospital. After examining her, Doctor declared that she was dead. Ananda then lodged F.I.R. (Exh. 26). Thereafter investigation commenced. After completion of investigation, the charge sheet came to be filed.

3 Charge came to be framed against the appellant under Sections 302, 504 and 506 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 the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal. It may be stated here that the appellant came to be acquitted of the offence under Section 504 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 appellant assaulted Kamal with a stick which led to her death.

5 The conviction of the appellant is mainly based on the evidence of PW 2 Ananda. Ananda was the husband of deceased Kamal. The appellant is the brother of Ananda. Ananda and his family, the family of another brother Shankar and the appellant were all residing in village Vadgaon in one house but separately. Ananda has stated motive for the

appellant to the commit the offence. Ananda has stated that his brother Shivaji and Tukaram were residing at Mumbai on account of their service, hence, he was cultivating the land of Shivaji and Tukaram. On account of this, the appellant used to quarrel with Ananda. The appellant used to give abuses to Ananda. This took place since two years prior to the incident. Ananda has stated that the incident took place on 20.5.2007. In the evening, Ananda was going to the house of his friend Kishan to have dinner. He was accompanied by Kishan and one Ranga Patil. On the way, the appellant met Ananda and started giving abuses to him. The appellant threatened that when Ananda returned back, he would show Ananda. When Ananda came back to his house, the appellant started abusing Ananda and his wife Kamal. Quarrel took place between them. There was a stick in the hands of the appellant and the appellant gave a blow with the stick on the back of Ananda. At that time, Kamal the wife of Ananda, came forward. The appellant gave a blow with the stick on the head of Kamal. She fell down. The appellant then gave a blow with the stick on left side of rib of Kamal. Kamal was thereafter taken to the hospital where she was declared dead. Nothing has been

elicited in the cross-examination of Ananda so as to cause us to disbelieve his evidence. His evidence shows that the appellant assaulted Kamal with a stick which led to her death.

6 The evidence of Ananda has been corroborated by the medical evidence. PW 5 Dr. Kamble conducted the post-mortem on the dead body of Kamal. On external examination, he found following two injuries on the dead body:

- (I) Imprint abrasions 2 x 3 cm. transverse, left side of chest at xypoid level;
- (II) Contusion 2 x 2 cms. over the back of vertex.

On internal examination, Dr. Kamble found hemorrhage in occipital region subdural. Under the scalp, there was a contusion on posterior aspect of vertex. In the opinion of Dr. Kamble, the said injuries can be caused by hard and blunt object. According to Dr. Kamble, the cause of death of the deceased is "neurogenic shock due to intracranial hemorrhage and said injuries are sufficient to cause the death". Dr. Kamble opined that if a stick blow is given on the head or on the back of any person then the injuries mentioned

in the autopsy report, can be caused.

7 Ms. Dandekar submitted that even if it is accepted that the act of the appellant of hitting Kamal on the head with a stick resulted in her death, the case would not fall under Section 302 of IPC, but it would fall under Section 304 Part-II of IPC. She pointed out that the evidence on record shows that when the incident occurred, a quarrel was going on between the appellant and the deceased and PW 2 Ananda. This has been stated by Ananda in his evidence. Ananda has clearly stated that when he came home, the appellant started abusing Ananda and Ananda's wife Kamal. Thereafter quarrel started. Then the appellant gave a blow with a stick on the head of Kamal and also on the rib. Ms. Dandekar drew our attention to the external injuries. She pointed out that the external injuries are only abrasions and small contusion. Ms. Dandekar submitted that the accused gave just two blows with a stick which is clear from the evidence of Ananda and the medical evidence. The external injuries are not at all of serious nature and they are very minor in nature. She submitted that this shows that it was not the intention of the appellant to cause

the death of Kamal. She submitted that if the appellant had intended to cause the death of Kamal, he would have continued assaulting Kamal. The fact that the appellant did not do so, shows that he did not have the intention to kill Kamal. Ms. Dandekar further submitted that the assault was not pre-meditated or preplanned but it happened on the spur of the moment in a fit of anger. Ms. Dandekar further submitted that the fact that the incident occurred during the course of sudden quarrel and the fact that it happened on the spur of moment in a fit of anger, would bring the case under Exception 4 to Section 300 of IPC and the case would thus, be covered by Section 304 Part-II of IPC.

8 To bring a case within Exception 4 to Section 300 of IPC, all the ingredients mentioned in it must be found. It is to be noted that the word "fight" occurring in Exception 4 to Section 300 of IPC, is not defined in the IPC. It takes two 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 the parties had worked themselves into a fury on account of verbal altercation going on between them. However, for the

application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation but it must be further shown that the offender has not taken any undue advantage or acted in a cruel or unusual manner. Based on the fact that the weapon in question was a stick and the appellant gave only two blows with a stick one on the head and one on the rib, we find much merit in the contention raised by Ms. Dandekar.

9 Considering the evidence on record, we are of the opinion that Exception 4 to Section 300 IPC applies to the facts of the case and the appropriate conviction would be under Section 304 Part-II of IPC. In addition, the prosecution has also proved its case for the offence under Section 506 of IPC. Hence, the following order is passed:

ORDER

(1) The conviction and sentence under Section 302 imposed on the appellant by judgment and order dated 28.12.2010 passed by the learned Additional Sessions Judge, Kolhapur in Sessions Case No. 92 of 2007 is set aside, instead, the appellant is convicted under Section 304 Part-II of IPC and

sentenced to suffer R.I. for nine years and fine of Rs.2000/- (Rs. two thousand only) in default to suffer S.I. for one month.

(2) The conviction and sentence of the appellant under Section 506 of IPC is maintained.

(3) Both the sentences shall run concurrently.

(4) Appeal is partly allowed to the aforesaid extent.

(5) Office to communicate this order to the appellant who is in Kolhapur Central Prison, Kalamba Kolhapur.

(6) We quantify legal fees to be paid to Advocate Ms. Rohini Dandekar by the High Court Legal Services Committee at Rs. 5000/-.

[MRS. MRIDULA BHATKAR, J.]

[SMT.V.K.TAHILRAMANI, J.]