

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

CRIMINAL APPEAL NO.265 OF 2012

1] Govind Kisan Bagade,	]	
Age: 41 years, Occu: Agriculturist,	]	
2] Sou. Meerabai Govind Bagade,	]	
Age: 36 years, Occu: Agriculturist,	]	
3] Sou. Yamuna Kisan Bagade,	]	
Age: 69 years, Occu: Household,	]	
All R/o: Humbe Vasti, Mouje	]	
Manjargaon, Tal: Karmala,	]	
District: Solapur.	]	
(at present lodged in Yerwada Central	]	
Prison, Pune)	]	
		]..Appellants (Org. Accused)

Versus

The State of Maharashtra,	]	
At the instance of Karmala	]	
Police Station, Tal: Karmala,	]	
District: Solapur.	]	
C.R. No.22 of 2018.	]	]..Respondent

Mr. Daulat G. Khamkar, Advocate for the Appellants.
Ms. M. H. Mhatre, APP for the Respondent - State.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 9th AUGUST, 2018**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Being aggrieved by the judgment and order dated 4th

February 2012 passed by the learned II Ad-hoc Additional Sessions Judge, Solapur in Sessions Case No.114 of 2008, thereby convicting the Appellants for the offence punishable under Section 302 r/w 34 of the Indian Penal Code ("IPC" for short) and sentencing them to suffer imprisonment for life and to pay fine of Rs.5000/- each and in default to undergo further imprisonment for two years, the Appellants have approached this Court.

2] The prosecution case in brief as could be gathered from the material placed on record is thus :-

Accused No.1 – Govind Bagade, deceased Tulshiram Bagade, Ramhari Bagade and Balu Bagade were the four sons of Yamuna Bagade and Kisan Bagade. Balu Bagade used to reside at Dudhawadi, whereas other three brothers used to reside at Humbe Vasti, Manjargaon, Taluka Karmala. All the brothers used to reside separately in the nearby vicinity. The parents Yamuna Bagade and Kisan Bagade used to reside with Accused No.1 – Govind Bagade. Accused No.2 – Meerabai Bagade is the wife of Accused No.1 – Govind Bagade, whereas Accused No.3 – Yamuna Bagade is the

mother of Accused No.1 – Govind Bagade. Accused No.3 – Yamuna Bagade is reported to be dead on 6th July 2018 and as such, Appeal stands abated in so far as she is concerned.

3] It is the prosecution case that there used to be quarrels between the sons of PW-6 – Ramhari Bagade and the sons of Accused Nos.1 and 2 – Govind Bagade and Meerabai Bagade. On 3rd February 2008 at around 7:00 a.m., when PW-6 – Ramhari Bagade and his wife Jijabai Bagade were at their house, Accused No.1 – Govind Bagade came there and told him that his wife had quarreled with the wife of Accused No.1 – Govind Bagade on earlier date and told him to persuade his wife to not to behave in that manner. It is further the prosecution case that thereafter Accused No.1 – Govind Bagade started abusing, threatening and assaulting PW-6 – Ramhari Bagade. The wife of PW-6 – Ramhari Bagade, deceased Jijabai Bagade and deceased Tulshiram Bagade intervened to separate them. However, Accused No.2 – Meerabai Bagade and Accused No.3 – Yamuna Bagade held both the hands of PW-6 - Ramhari Bagade. Accused No.1 – Govind Bagade drew a knife from his pocket and stabbed Jijabai Bagade on her left side of chest and with same knife

he also stabbed on left side chest of Tulshiram Bagade. Thereafter he ran away alongwith knife. Both Jijabai Bagade and Tulshiram Bagade fell on the ground. A jeep was arranged to take them to the hospital. On reaching hospital, the deceased were declared dead. The oral report came to be lodged by PW-6 – Ramhari Bagade. On the basis of the said oral report, Crime No.22 of 2008 came to be registered for the offences punishable under Sections 302, 504, 506 r/w 34 of IPC. On completion of investigation, a charge-sheet came to be filed in the Court of JMFC, Karmala. Since the case was exclusively triable by the learned Sessions Judge, the case was committed to the learned Sessions Judge, Solapur. The charges came to be framed for the offence punishable under Sections 302, 504, 506 r/w 34 of IPC. At the conclusion of trial, learned Trial Judge passed the order of conviction as aforesaid, however, he acquitted the accused for the offence punishable under Section 504 and 506 of IPC. Hence, the present Appeal.

4] Mr. Daulat G. Khamkar, learned counsel appearing on behalf of the Appellants submits that the prosecution case is based on the evidence of interested witnesses. He submits that PW-6 –

Ramhari Bagade is the husband of deceased Jijabai Bagade, whereas PW-5 – Sujata Bagade is the wife of deceased Tulshiram Bagade. Learned counsel therefore submits that the order of conviction on the basis of such interested witnesses would not be sustainable. In the alternative, learned counsel submits that the incident is an outcome of quarrel between three brothers and their families. There was no intention to cause death of the deceased, however, in a heat of passion out of sudden quarrel, the incident has taken place and therefore, conviction under Section 302 of IPC would not be tenable and it will have to be brought down to a lesser offence.

5] Ms. M. H. Mhatre, learned APP on the contrary submits that taking into consideration the fact that due to assault by the accused on vital parts, death of two persons has occurred. It is therefore submitted that the case would fall only under Section 302 of IPC. It is further submitted that merely because witnesses are interested witnesses, this cannot be a ground to discard their testimony.

6] With the assistance of learned APP and the learned

counsel for the Appellants we have scrutinized the evidence on record.

7] No doubt that PW-5 – Sujata Bagade and PW-6 – Ramhari Bagade are interested witnesses, inasmuch as they are wife and husband of the deceased Tulshiram Bagade and Jijabai Bagade. However, it is to be noted that they are also brother and sister-in-law of the Accused No.1 – Govind Bagade. In any case, in an incident that has taken place between the families of three brothers, it would be difficult to have independent witnesses. However, as a matter of precaution, the evidence of these witnesses will have to be scrutinized with greater caution. Perusal of evidence of PW-5 – Sujata Bagade and PW-6 – Ramhari Bagade would clearly reveal that there was quarrel between Accused No.1 – Govind Bagade and PW-6 – Ramhari Bagade. As a result of the quarrel, Accused No.1 – Govind Bagade has assaulted deceased Tulshiram Bagade and Jijabai Bagade. We find that in so far as the evidence of these two witnesses regarding the injury being caused to the deceased persons on account of assault by Accused No.1 – Govind Bagade is concerned, the same has remained unshaken. We further find that

to some extent the evidence of these two witnesses is also supported by the evidence of PW-4 – Maruti Humbe, who is a neighbour.

8] In that view of the matter, we do not find that there is any reason to interfere with the finding of learned Trial Judge that it is the present Accused No.1 – Govind Bagade, who is the author of the crime of assaulting the deceased persons with knife, which resulted into the death of Tulshiram Bagade and Jijabai Bagade.

9] That leaves us with a question, as to whether conviction under Section 302 of IPC needs to be maintained or altered to some other offence. In so far as injuries of deceased Tulshiram Bagade are concerned, the evidence of PW-7 – Dr. Saroj Khot would reveal that he has received following external injuries:-

- “[1] Incised injury size 1” x 1/2” x1” on a below lt. nipple.
- [2] Abrasion on lt. Lower leg at middle part, size 2 cm x ½ cm
- [3] Multiple abrasion mark on legs, Back and Hand.”

In so far as deceased Jijabai Bagade is concerned, she has sustained

following external injuries :-

“[1] Incised wound size 3 cm x 2 cm x 1 cm and 2”
below lt. nipple obliquely placed +.”

It could thus clearly be seen that though the injury is on vital part of the body of both the deceased, it is only single major injury suffered by both the deceased. In so far as two other injuries sustained by deceased Tulshiram Bagade are concerned, they are minor in nature.

10] It is to be noted that in the said incident, the Appellant Nos.1 and 2 have also suffered injuries. The injuries suffered by them are as under :-

Name :- Govind Kisan Bagade					
Nature of Injury Bruise Abrasion wound etc.	Size of each injury L X B X D	On what part of the body inflicted	By what weapon	Age of injury	Simple Grievous or dangerous to life
Contusion laceration	3 cm X 2 cm	lf. cheek	Hard & Blunt	Within 24 hr.	Simple

Name :- Meerabai Kisan Bagade					
Nature of Injury Bruise Abrasion wound etc.	Size of each injury L X B X D	On what part of the body inflicted	By what weapon	Age of injury	Simple Grievous or dangerous to life
1] Swelling	4 cm X 2 cm	Rt. wrist joint	Hard & blunt	Within 24 hr.	Simple
2] Swelling	4 cm X 2 cm	Lt. wrist joint	Hard & blunt	Within 24 hr.	Simple

It would further be relevant to note that PW-5 – Sujata Bagade and PW-6 – Ramhari Bagade in their cross-examination have admitted that the quarrel was taken place in a heat of passion. Taking into consideration that there is single major injury sustained by both the deceased and further that the Appellants have also received injuries in the said incident and further admission on behalf of PW-6 – Ramhari Bagade, the possibility of the Accused No.1 – Govind Bagade assaulting the deceased in a heat of passion upon sudden quarrel, cannot be ruled out. From the nature of the injuries and the evidence of witnesses, it cannot be said that the Appellant No.1/Accused No.1 – Govind Bagade has taken undue advantage and acted in cruel manner. The weapon alleged to have been used in the crime is a knife of four inches with grip of 4 ½ inches. It is

further to be noted that the prosecution has not explained the injuries sustained by the accused persons. We are of the considered view that the prosecution has not brought on record the real genesis of the incident. The possibility of the Appellant No.1/Accused No.1 – Govind Bagade assaulting the deceased on account of grave provocation in a heat of passion out of sudden quarrel cannot be ruled out. We are of the considered view that the Appellant No.1/Accused No.1 – Govind Bagade is entitled to the benefit of doubt. The case would come under Part-I of Section 304 of IPC rather than 302 of IPC.

11] In so far as the Appellant No.2/Accused No.2 – Meerabai Bagade is concerned, we find that there is absolutely no case against her. It is not the prosecution case that all the three accused had come together from the house to the house of PW-6 – Ramhari Bagade. Looking at the topography, it appears that houses of all the three brothers were adjacent to each others. The Accused No.2 – Meerabai Bagade, subsequently coming on the spot after the quarrel started, cannot be ruled out. In any case, the role attributed in the evidence of PW-5 – Sujata Bagade and PW-6 – Ramhari Bagade is of

catching the PW-6 – Ramhari Bagade. There is no material to show that the Accused No.2 – Meerabai Bagade and Accused No.3 – Yamuna Bagade have any role to play of either assaulting the deceased or in any way assisting the Accused No.1 – Govind Bagade in assaulting the deceased. As such, we find that the conviction of the Accused No.2 – Meerabai Bagade is not at all sustainable. In the result, Accused No.2 is entitled to be acquitted to the charges charged with.

12] In the result, we pass the following order :-

ORDER

- I) The Criminal Appeal No.265 of 2012 is partly allowed.
- II) The order of conviction and sentence of Appellant No.1 – Govind Bagade is altered to one under Part-I of Section 304 from 302 of IPC.
- III) He is sentenced to suffer rigorous imprisonment for ten years for the said offence.

- IV) The order of conviction and sentence of Appellant No.2/Accused No.2 – Meerabai Bagade is quashed and set aside.
- V) Appellant No.2/Accused No.2 – Meerabai Bagade is acquitted of the charges charged with.
- VI) Bail bonds of Appellant No.2/Accused No.2 – Meerabai Bagade shall stand discharged.

[SARANG V. KOTWAL, J.]

[B. R. GAVAI, J.]