

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

CRIMINAL APPEAL NO. 682 OF 1997

Ramchandra Dhondu Revale aged about 42 years Occ. Agriculture R/o. Dahagaon Tal. Mandangad, Dist. Ratnagiri (At present lodged in Ratnagiri District Prison, Ratnagiri)	... Appellant/Orig. Accused
V/s. The State of Maharashtra	... Respondent

Mr. S.B. Shetye for the Appellant.
Ms. M.M. Deshmukh, A.P.P. for the Respondent-State.

**CORAM : INDRAJIT MAHANTY AND
V.K. JADHAV, JJ.**

Judgment reserved on : 4th DECEMBER, 2018.
Judgment pronounced on : 13th DECEMBER, 2018.

JUDGMENT (Per V.K. Jadhav, J.):

1 This is an Appeal preferred by the sole accused against the judgment and order of conviction u/s.302 of I.P.C. passed by the learned Sessions Judge, Ratnagiri, dated 17.10.1997 in Sessions Case No.18 of 1996 whereas the learned Sessions Judge, Ratnagiri, has convicted the Appellant-Accused for the offence punishable under Section 302 of the I.P.C. and sentenced to suffer life imprisonment.

2 Brief facts of the prosecution case are as follows :-

PW3 Anandi and her husband deceased Sonu were residing in their own house at Dahagaon. Their daughters were married then and son was staying at Pune. Thus, the old couple was alone in the village. The Appellant-Accused Ramchandra and Gangaram, the cousins of the deceased Sonu, residing separately in their houses situated near the house of the old couple. Appellant-Accused and said Gangaram had neglected to worship family deity. Deceased Sonu had taken it to his heart. It was his expectation that either Gangaram or the Appellant-Accused should have performed pooja of family deity atleast on the occasion of holy festival, but both of them were adamant. As deceased Sonu could not bear it more and he began to talk loudly by sitting on the ota (front side platform of the house) of his house after having dinner in the night of 15.03.1995. PW3 Anandi was inside the house. By listening the said loud voice of the deceased Sonu, the Appellant-Accused got annoyed. Thus, Appellant-Accused along with his mother came to deceased Sonu. He began to quarrel with deceased Sonu. In the said quarrel, Appellant-Accused took a sickle from a peg in padvi (front room portion of Sonu's house). He then inflicted its blow on the left hand of Sonu. The blow was fatal and the left Brachial artery of deceased Sonu was cut. There was profuse bleeding from the

injury. Deceased Sonu ultimately fell down on the ota and died. On receiving the information, PW2 police patil Prakash Tatoba Dalvi had come to the house of Sonu. PW3 Anandi had narrated the incident to him. PW2 Prakash Dalvi thereafter gave an intimation on telephone to Mandangad Police Station and he himself also rushed to the Police Station and lodged the complaint. On the basis of his complaint Crime No.10 of 1995 for the offence punishable under Section 302 of I.P.C. came to be registered in the concerned Police Station. Investigating Officer carried out the investigation and finally submitted the charge-sheet against the Appellant-Accused. Learned Judge of the trial Court has framed the charge for the offence punishable under Section 302 of I.P.C. The Appellant-Accused has not pleaded guilty and claimed to be charged tried.

3 The prosecution has examined in all four witnesses to substantiate the charges levelled against the Appellant-Accused. Defence of the accused is of total denial. Learned Sessions Judge, Ratnagiri, vide judgment and order of conviction dated 17.10.1997 convicted the Appellant-Accused for the offence punishable under Section 302 of I.P.C. and sentenced him to suffer life imprisonment. Hence this Appeal.

4 The learned Counsel for the Appellant-Accused submits that the

evidence of PW3 Anandi is not consistent, reliable and trustworthy. Her evidence is full with omissions and contradictions. The learned Counsel for the Appellant-Accused submits that it would not safe to rely on her sole testimony. PW3 Anandi has admitted in her cross-examination that she is having deem eye sight and at the time of incident there was darkness. In the alternate, learned Counsel for the Appellant-Accused submits that no inference about the murderous intention on the part of Appellant-Accused could have been drawn. It is a case of single blow inflicted during the course of the exchange of hot words and in the hit of anger.

5 The learned A.P.P. submits that the ocular evidence of PW3 Anandi is fully corroborated by the medical evidence on record. It is sufficient to prove the guilt of the accused. The learned A.P.P. submits that after hearing the chattering in loud voice of deceased Sonu, the Appellant-Accused went in the house of deceased Sonu and inflicted the blow of sickle on his left hand. The blow was so forcible that it has actual cut the artery along with Biceps muscle and tendon. The learned Judge of the trial Court has thus, rightly inferred about the murderous intention on the part of Appellant-Accused. There is no substance in the Appeal and the Appeal is liable to be dismissed.

6 Prosecution has mainly relied upon the ocular evidence of PW3 Anandi. The prosecution has examined only PW3 Anandi as eye witness to the incident. After giving all the details of the quarrel PW3 Anandi has deposed that the accused took the sickle which was on the peg and inflicted its blow on the left hand of her husband and her husband sustained bleeding injury. She has also identified the sickle muddemal No.1 before the Court. Though in para No.4 in her cross-examination, PW3 Anandi has admitted that she is in short of sight and she could not see the object even at the short distance during night time, however, we do not find that her evidence is liable to be discarded on the ground of this admission alone. We find that PW3 Anandi has deposed about the incident with all minute details. Thus, it cannot be inferred that she was not in a position to witness the incident due to her weak eye sight. The evidence of PW3 Anandi is reliable, consistent and trustworthy.

7 The conviction can be based on testimony of sole witness as it is quality and not quantity of evidence that is relevant for proving fact. Law does not require any particular number of witnesses to be examined for proving any relevant fact, however, when decision rest on the evidence of solitary witness, Court would have to circumspect and analyze his/her evidence with due care and caution.

8 In the instant case the testimony of sole witness PW3 Anandi is well corroborated by the medical evidence. PW1 Dr. Balaji Mundhe has conducted the postmortem of dead body of deceased Sonu. He has noticed the following five injuries :

- 1) Incised injury over left cubital fossa 8 Cm. in length and 4 Cm. in width.
- 2) Brachial artery 2/3 was cut. Biceps muscle and tendon was cut.
- 3) One legature mark was seen above the incised injury.
- 4) Brachial vain was also seen.
- 5) C.L.W. over nasal bone.

9 He has opined about the age of injury as within 24 hours and injury was caused by sharp and hard object. He has also expressed the opinion that the injuries were antemortem. It is opinion that the death was caused due to profuse hemorrhagic shock due to incise injury to left brachial artery. He has ruled out the possibility that in a simple struggle and incident of pushing, such type of injury is possible. So far as injury No.2 is concerned, along with the cut of artery, the biceps muscle and tendon was also cut. In view of the same, we do not think the possibility of sustaining the injury accidentally. It was a forceful blow of the sickle which has caused biceps muscle and tendon cut.

10 On going through the evidence of PW3 Anandi minutely, we find that the incident had occurred on chattering reasons. The Appellant-Accused has not brought the weapon sickle along with him from his house. During the course of quarrel/scuffle, the Appellant-Accused took the sickle which was kept on the peg in the house of the deceased Sonu itself. It is not the case of the prosecution that the Appellant-Accused was about to inflict the blow of the sickle on the vital part of the body of the deceased to which deceased resisted by blocking the said blow with the help of his left hand and sustained the injury. PW3 Anandi had deposed that the accused inflicted the blow of the sickle on the left hand of her husband. Injury No.1 is the main injury and the injuries Nos.2 to 4 are the consequences of the said injury. It is thus clear that the Appellant-Accused had caused the grievous injury on the non-vital part of the body of the deceased and there was no intention to do away with the life of the deceased. In our considered opinion, the conviction under Section 302 of the Appellant-Accused is not sustainable however, in the facts of the case, the conviction is required to be altered to one under Section 326. The Appellant-Accused had used the dangerous weapon sickle in the assault. Though the Appellant-Accused was not intending to cause any grievous hurt to deceased Sonu, however, by using the sickle in the assault and the force used in inflicting the blow on

the left hand of the deceased with the help of deadly weapon sickle, the inference could be drawn that the Appellant-Accused was having knowledge that he likely thereby to cause grievous hurt to the deceased. We accordingly alter the conviction of the accused under Section 326 of the I.P.C.

11 There are certain mitigating circumstances to take the lenient view in the matter. The Appellant-Accused and one Gangaram are the cousins of deceased Sonu. The Appellant-Accused and the said Gangaram neglected to worship the family deity. Deceased Sonu had taken it to his heart. It was his expectations that atleast either Gangaram or the accused should perform the pooja of the family deity on the occasion of holy festival. It is also evident that the quarrel had taken place all of a sudden without any premeditation. The Appellant-Accused has not carried the weapon with him from his house. He took the sickle from the house of deceased Sonu itself. We are thus, inclined to take the lenient view in the matter so far as the sentence part is concerned. The following order would meet the ends of justice :-

Order

- i) Appeal is partly allowed.

ii) The judgment and order dated 17.10.1997 passed by the Sessions Judge, Ratnagiri, in Sessions Case No.18 of 1996 convicting thereby the accused under Section 302 of the I.P.C. and sentencing him to suffer life imprisonment, is hereby quashed and set aside.

Instead

iii) Appellant-Accused Ramchandra Dhondu Revale is convicted for the offence punishable under Section 326 of the I.P.C. and sentenced to suffer R.I. for two years and also to pay a fine of Rs.25,000/- (Rs. Twenty Five thousand only), in default, to suffer S.I. for six months.

iv) Appellant-Accused Ramchandra Dhondu Revale shall be taken into custody forthwith to serve the sentence.

v) We further direct that out of the fine amount, the amount of Rs.20,000/- (Rs. Twenty thousand only) be paid to PW3 Anandi as a compensation.

vi) Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

(INDRAJIT MAHANTY, J.)