

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.859 OF 2015

Vinod Ramesh Pimple,
Age – 34 years, Occupation : Labourer,
R/o.Kukana, Taluka – Nevasa,
District.Ahmednagar, At present
Yerawada Jail ... **Appellant**

V/s.

The State of Maharashtra
(through Yawat Police Station
vide CR No.204/2012.) ... **Respondent**

.....

Ms.Savita A. Prabhune, Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 15th MARCH 2018.

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the Judgment and Order dated 18/12/2014 passed by the Additional Sessions Judge, Baramati in Sessions Case No.6 of 2013 thereby convicting him of offences punishable under Section 304 Part II, 323 and 33 of the Indian Penal Code. For the offence

punishable under Section 304 Part II, the appellant/accused is sentenced to suffer rigorous imprisonment for seven years apart from imposition of fine of Rs.1000/- and default sentence of one month. For the offence punishable under Section 323 of the IPC, he is sentenced to suffer rigorous imprisonment for three months apart from imposition of fine of Rs.200/- and default sentence of ten days simple imprisonment. For the offence punishable under Section 325 of the IPC, the appellant/accused is sentenced to suffer rigorous imprisonment for one year apart from imposition of fine of Rs.300/- and default sentence of fifteen days simple imprisonment. Substantive sentences are directed to run concurrently by the learned trial Court. The appellant/accused has been held guilty of culpable homicide not amounting to murder of his father-in-law Ganpat Pawar. He has been held guilty for causing grievous hurt to his wife P.W.No.4 Sunita Pimple, whereas he has been held guilty of causing hurt to his brother-in-law P.W.No.1 Prakash Pawar.

2 Brief facts leading to the prosecution of the appellant/accused are thus :

(a) Ganpat Pawar (since deceased) was father of injured P.W.No.1 Prakash Pawar and P.W.No.4 Sunita Pimple. About 15 years prior to the incident, the appellant/accused married P.W.No.4 Sunita. After few years of her marriage with the

appellant/accused, P.W.No.4 Sunita was used to be subjected to cruelty by the appellant/accused and the appellant/accused has deserted her. Hence she was required to take shelter of her parental house, where she was residing with her father Ganpat Pawar (since deceased) and her brothers P.W.No.1 Prakash Pawar and P.W.No.3 Bhagwan.

- (b) According to the prosecution case, on 17/09/2012, the appellant/accused telephonically contacted P.W.No.1 Prakash Pawar and had a talk with his wife P.W.No.4 Sunita Pimple. During the course of that call, he insisted her to resume cohabitation.
- (c) According to the prosecution, at about 11.30 p.m. on 17/09/2012, door of the house of P.W.No.1 Prakash Pawar was knocked by somebody. P.W.No.1 Prakash Pawar opened the door, but nobody was found outside. After some time again somebody knocked the door. At that time, Ganpat Pawar opened the door to see the appellant/accused standing outside. Ganpat Pawar questioned the appellant/accused as to why he has come to his in-law's house at such late hours of the night. He also warned the appellant/accused that he will not allow his daughter P.W.No.4 Sunita Pimple to accompany him unless and until he brings his parents with him. Annoyed appellant/accused insisted that he shall take P.W.No.4 Sunita

Pimple with him, she being his wife. Then the appellant/accused assaulted Ganpat Pawar by means of a wooden log lying nearby. When P.W.No.4 Sunita Pimple and P.W.No.1 Prakash Pawar attempted to rescue their father Ganpat Pawar, the appellant/accused assaulted them by means of said wooden log. Because of blows of wooden log, Ganpat Pawar suffered a fall outside his house.

- (d) The neighbourer of Pawar family took injured Ganpat Pawar and P.W.No.1 Prakash Pawar by a two-wheeler to the hospital of P.W.No.2 Dr.Sonal Baravkar. Looking at condition of Ganpat Pawar, she referred him to the Noble Hospital, Hadapsar, Pune. P.W.No.1 Prakash Pawar then took his father Ganpat Pawar to the Noble Hospital, Pune, where Ganpat Pawar was declared dead at about 6.00 a.m. on 18/09/2012. P.W.No.9 Dr.Ajay Taware, Assistant Professor of Medicine Department of the B.J.Medical College, Pune conducted autopsy on the dead body of Ganpat Pawar.
- (e) Injured P.W.No.1 Prakash Pawar lodged report of the incident with Police Station Yawat, which has resulted in Crime Registration No.204 of 2012 for offences punishable under Sections 302, 325, 324 and 323 of the IPC against appellant/accused on 18/09/2012 itself. During investigation, spot of the incident came to be inspected by the Investigator

in presence of panch witness P.W.No.5 Balu Kasbe and spot panchanama (Exhibit 35) was prepared. Weapon of the offence i.e. the wooden log came to be seized in presence of P.W.No.7 Shivaji Shegar, a panch witness. On completion of investigation, the appellant/accused came to be charge-sheeted.

- (f) As the appellant/accused pleaded not guilty to the charges framed against him, the prosecution has examined in all nine witnesses for establishing the charge. Injured informant Prakash Pawar is examined as P.W.No.1. Dr.Sonal Baravkar, owner of Kamal General Hospital, Kedgaon Choufula is examined as P.W.No.2. Bhagwan Pawar, son of deceased Ganpat is examined as P.W.No.3. Sunita Vinod Pimple – daughter of the deceased and wife of the appellant/accused is examined P.W.No.4. Balu Kasbe – a panch witness to the spot panchanama (Exhibit 35) is examined as P.W.No.5. Dr.Balasaheb Kadam, Medical officer of Rural Hospital, Yawat, who examined P.W.No.4 Sunita Pimple and issued Medical Certificate (Exhibit 37) is examined as P.W.No.6. Panch witness Shivaji Shegar is examined as P.W.No.7 and Exhibit 40 is the seizure panchanama of the wooden log. Bapurao Gawade, the then Police Sub-Inspector of Yawat Police Station is examined as P.W.No.8. Autopsy Surgeon Dr.Ajay Taware is examined as P.W.No.9.

- (g) The defence of the appellant/accused was that of total denial. As per the defence version, Ganpat Pawar suffered a fall from some platform outside his house and died accidental death. The other limb of the defence is to the effect that the deceased was in the public employment and for appropriating his death-cum-retiral dues, he was done to death by his son and daughter i.e. P.W.No.1 Prakash Pawar and P.W.No.4 Sunita Pimple.
- (h) After hearing the parties, by the impugned Judgment and Order dated 18/12/2014 passed in Session Case No.6 of 2013, the appellant/accused came to be convicted for the offences punishable under Section 304 Part II, 325 and 323 of the IPC and he has been sentenced as indicated in opening paragraph of this Judgment.

3 I heard the learned Advocate appearing for the appellant/accused. She has vehemently argued that there is delay of about seven days in examination of injured P.W.No.4 Sunita Pimple. The Doctor from Noble Hospital is not examined by the prosecution. The medical case papers of the Noble Hospital are not disclosing subdural hematoma or fracture of skull. Though CT scan was conducted at the Nobel Hospital, the same is suppressed by the prosecution. There was no external injury on head of the deceased. Even, P.W.No.2 Dr.Sonal Baravkar has not spoken

about the fracture injury or contusion and, therefore, the findings in the postmortem report are doubtful. It is further argued that seizure of the wooden log allegedly took place on 22/08/2012 and as such, this belated seizure is not useful to the prosecution. The learned Advocate further argued that though the distance between Hospital of P.W.No.2 Dr.Sonal Baravkar and the Noble Hospital at Pune was very short, the deceased was shown to be admitted at the Noble Hospital at about 5.00 or 6.00 p.m. It is further argued that there is delay of about more than ten hours in conducting the postmortem examination and, therefore, the prosecution case is doubtful. The learned Advocate further argued that the learned trial Court has not appropriately sentenced the appellant/accused.

4 The learned Additional Public Prosecutor supported the impugned Judgment and Order by contending that the prosecution has established the guilt of the appellant/accused through the most natural witnesses to the incident and evidence adduced by the prosecution is trustworthy and reliable.

5 I have carefully considered the rival submissions and also perused the Record and Proceedings including oral as well as documentary evidence.

6 The case in hand is a case of causing death of the father-in-law as well as causing grievous hurt to the wife and hurt

to the brother-in-law by the appellant/accused. The incident in question took place in the night intervening 17/09/2012 and 18/09/2012. The place of the incident is in front door courtyard of the house of the deceased Ganpat Patil situated at village Kedgaon, Daund Taluka, Pune District. The said house, as seen from the prosecution case as well as undisputed position emerging on record, was inhabited by two sons and the daughter of Ganpat Pawar. Those two sons and daughter are examined by the prosecution as P.W.No.1 Prakash Pawar, P.W.No.3 Bhagwan Pawar and P.W.No.4 Sunita Pimple. At the time of the incident in question, P.W.No.3 Bhagwan Pawar was not in the village. This position emerging on record rather undisputedly from the evidence adduced by the prosecution, makes it clear that case of the prosecution is primarily dependent on evidence of P.W.No.1 Prakash Pawar and P.W.No.4 Sunita Pimple, who are brother-in-law and wife of the appellant/accused, respectively. Evidence on record also suggest that since long P.W.No.4 Sunita Pimple was residing at the house of her father i.e. Ganpat Pawar and the reason stated by her as well as her brothers P.W.No.1 Prakash Pawar and P.W.No.3 Bhagwan Pawar for this is cruel treatment given to her by her husband i.e. appellant/accused.

7 Let us, therefore, examine as to what P.W.No.1 Prakash Pawar and P.W.No.4 Sunita Pimple are stating about the incident in question. The congruous evidence of P.W.No.1

Prakash Pawar and P.W.No.4 Sunita Pimple is to the extent that at about 5.00 p.m. of 17/09/2012, there was a telephonic call by the appellant/accused on the cellphone of P.W.No.1 Prakash Pawar. He had talk with P.W.No.4 Sunita Pimple during the course of that call. P.W.No.4 Sunita Pimple had stated that during the telephonic talk with her, the appellant/accused told her to come back to her matrimonial house immediately. Even, P.W.No.1 Prakash Pawar has stated that during telephonic call, the appellant/accused asked P.W.No.4 Sunita Pimple that he is coming to take her to the matrimonial house. In unison, P.W.No.1 Prakash Pawar and P.W.No.4 Sunita Pimple have stated that thereafter, at about 11.30 p.m. of 17/09/2012, the front door of their house was knocked on two occasions. On second occasion, when the door was opened by deceased Ganpat Pawar, the appellant/accused was found outside the door. It has come in evidence of P.W.No.1 Prakash Pawar and P.W.No.4 Sunita Pimple that the appellant/accused asked his father-in-law – Ganpat Pawar to send back P.W.No.4 Sunita Pimple with him. Deceased Ganpat Pawar refused to oblige the appellant/accused and asked him that he should bring his parents with him. The father-in-law informed the son-in-law that P.W.No.4 Sunita Pimple will not be send back with him. Thereafter, the incident in question, as per version of both these witnesses, took place. The appellant/accused took up a wooden log lying nearby and gave blows thereof to Ganpat Pawar on hand and head. When both these witnesses intervened, the

appellant/accused gave blows of the wooden log on hand and leg of P.W.No.4 Sunita Pimple and on hand and left leg of P.W.No.1 Prakash Pawar. Because of this assault, Ganpat Pawar fell down in front of his house. P.W.No.4 Sunita Pimple has deposed that at that time blood was oozing from right ear of his father Ganpat Pawar. This is the eye-witness account of the incident given by both these eye-witnesses i.e. P.W.No.1 Prakash Pawar and P.W.No.4 Sunita Pimple, who are witnesses closely related to the appellant/accused as well as deceased Ganpat Pawar. Both these witnesses denied the suggestions given in the cross-examination to the effect that deceased Ganpat Pawar suffered a fall from platform located in front of the house and suffered head injury. Careful perusal of cross-examination of both these witnesses goes to show that material elicited from their cross-examination is, in fact, cementing the case of prosecution. From cross-examination of P.W.No.1 Prakash Pawar, it has been brought on record that the appellant/accused was holding the wooden log in his right hand. It is further brought on record from the cross-examination of P.W.No.1 Prakash Pawar that when deceased Ganpat Pawar standing on the platform, the appellant/accused came and knocked the door. Thus, presence of the appellant/accused on the scene of occurrence, at the time of occurrence, is not even disputed or denied during the cross-examination of the prosecution witnesses. In a similar way, it is elicited from cross-examination of P.W.No.4 Sunita Pimple that a neighbourer Girm

took her father and brother to the hospital after the incident. Be that as it may, the defence theory that both these witnesses have done their father to death for appropriating his death-cum-retiral dues cannot be accepted or deserves a moment consideration. No such far stretching inference can be drawn only because after death of their father, these prosecution witnesses and other relatives of the deceased received dues payable to the deceased by his employer and utilized the same for purchasing the house.

8 One may argue that both these eye-witnesses are relatives of the deceased and, therefore, their evidence cannot be relied upon. However, if a death is caused at the dwelling house, inmates of that house are the most natural witnesses to such incident. They cannot be termed as 'chance witnesses'. In such case, "related" is not equivalent to "interested". A witness is called as "interested" only when he or she derives benefit from the litigation. Even otherwise, an 'interested witness' or a 'witness having inimical dispositions towards the accused' would not shield the real culprit and rope in an innocent person. In the case of only one accused, theory of false implication in such type of offence does not deserve a moment consideration. Therefore, I see no reason to disbelieve evidence of both these eye-witnesses, who are most natural witnesses to the incident happened at the front door of their house in the midnight.

9 Evidence of P.W.No.1 Prakash Pawar, who himself is injured in the incident, having suffered blows of wooden log, is gaining further corroboration from the FIR lodged by him with promptitude on the very same day with the police station. His evidence is gaining further corroboration from evidence of P.W.No.2 Dr.Sonal Baravkar, owner of Kamal General Hospital, who has stated that at about 1.00 a.m. of 18/09/2012, Ganpat Pawar was brought to her hospital in unconscious condition and she then referred him to Rural Hospital.

10 P.W.No.3 Bhagwan Pawar is another son of deceased Ganpat Pawar. His evidence provides the former statement of injured P.W.No.1 Prakash Pawar in respect of incident in question. When Ganpat Pawar was being taken by ambulance to the Nobel Hospital, Pune P.W.No.1 Prakash Pawar contacted his brother P.W.No.3 Bhagwan Pawar telephonically and informed him that their father is assaulted by the appellant/accused and they are going to Pune for giving medical treatment to Ganpat Pawar. This former statement was made by P.W.No.1 Prakash Pawar to his brother P.W.No.3 Bhagwan Pawar soon after the incident when mind of P.W.No.1 Prakash Pawar was not polluted by any external forces nor there was any chances of the same. This duly proved former statement becomes admissible in evidence as per provisions under Section 157 of the Evidence Act to infer guilt of the appellant/accused in the crime in question.

11 P.W.No.9 Dr.Ajay Taware had conducted autopsy on the dead body in between 5.00 p.m. to 6.00 p.m. of 18/09/2012. Ganpat Pawar declared dead in the morning hours of 18/09/2012 at the Noble Hospital, Pune. Though, it is argued that there is delay of about ten hours in conducting autopsy, this factor cannot casts a cloud of doubt on the prosecution case simply because there is nothing in the cross-examination of P.W.No.9 Dr.Ajay Taware or rather in cross-examination of any of the witnesses to show that certain postmortem injuries were caused to the dead body and for this purpose, there was delay in conducting autopsy. Evidence of P.W.No.9 Dr.Ajay Taware goes to show that all injuries found on the dead body were anti-mortem in nature and this statement was not at all challenged in the cross-examination. As seen from evidence of this Autopsy Surgeon, he noticed contusion over the left mastoid region of size 8 x 5 cm. and abrasion over left knee of the dead body. Internal examination of head of the dead body reveals that apart from hematoma of size 14 x 10 c.m. over the left temporo mastoid region, there was linear displaced fracture of length 8 c.m. The Autopsy Surgeon categorically stated that the external as well as corresponding internal injuries found on the dead body are possible by article No.1 – wooden log. Thus, evidence of P.W.No.9 Dr.Ajay Taware apart from establishing homicidal death of Ganpat Pawar is also corroborating version of eye-witnesses in respect of assault on the deceased by means of wooden log.

12 Finding of a stains of blood on the spot of the incident, as seen from the spot panchanama (Exhibit 35), which is duly proved by the Investigator, also corroborates the version of injured witnesses. Evidence of P.W.No.9 Dr.Ajay Taware, Autopsy Surgeon also shows that there was bleeding from right ear of the dead body and this fact is also vouched by P.W.No.4 Sunita Pimple. Thus, over all scrutiny of evidence of prosecution witnesses goes to show that they are trustworthy and reliable witnesses and their evidence was a ring of truth.

13 P.W.No.4 Sunita Pimple has suffered fracture on left ulna, as seen from the evidence of P.W.No.6 Dr.Balasaheb Kadam, Medical Officer, Rural Hospital, Yawat. He has examined P.W.No.4 Sunita Pimple on 24/09/2012 i.e. after about five days from the incident. There is nothing in cross-examination of P.W.No.4 Sunita Pimple or that of P.W.No.6 Dr.Balasaheb Kadam, Medical Officer, Rural Hospital, Yawat to suggest that the fracture injury suffered by P.W.No.4 Sunita Pimple is an injury subsequent to the incident in question. No such suggestions are given either to P.W.No.4 Sunita Pimple or to P.W.No.6 Dr.Balasaheb Kadam, Medical Officer, Rural Hospital, Yawat. P.W.No.4 had lost her father at the hands of her husband and this gives an explanation for her belated examination by P.W.No.6 Dr.Balasaheb Kadam, Medical Officer, Rural Hospital, Yawat. The entire family must have suffered trauma of losing Head of the family and they must

be busy in last rites of deceased Ganpat Pawar. Hence, belated medical treatment and belated medical examination of P.W.No.4 Sunita Pimple is of no consequence.

14 In the result, no fault can be found with conviction of the appellant/accused for the offences punishable under Sections 304 Part II, 323 and 325 of the IPC for causing death of Ganpat Pawar, for causing grievous hurt to P.W.No.4 Sunita Pimple and for causing hurt to P.W.No.1 Prakash Pawar.

15 Now, let us examine whether the learned trial Court has imposed proper punishment to the appellant/accuse for offences proved against him. For the offence punishable under Section 304 Part II of the IPC, the appellant/accused is sentenced to suffer rigorous imprisonment for seven years. Some fine and default sentence are also imposed on him. While imposing punishment, the Court is required to keep due regard to all attending circumstances in which the offence took place. The degree of criminality shown while committing the crime is a relevant factor. The punishment is required to be proportionate and commensurate with the gravity as well as nature of crime and the manner in which the offence is committed by the accused. Similarly, mental condition of the accused is also required to be kept in mind while imposing punishment. Circumstances of accused also forms relevant consideration while imposing punishment on him.

16 In the case in hand, P.W.No.4 Sunita Pimple is wife of the appellant/accused. According to the prosecution case, their marriage was solemnized long back in the year 1990. P.W.No.1 Prakash Pawar had stated that the appellant/accused used to quarrel with P.W.No.4 Sunita Pimple and, therefore, she started residing with them. As against this, as per version of P.W.No.4 Sunita Pimple, the appellant/accused used to ask for money from her father Ganpat Pawar and was ill-treating her and had deserted her. As such, she was residing with her parents. Despite this, both these witnesses are unanimous in stating that the appellant/accused telephonically called them on the day of the incident and insisted that P.W.No.4 Sunita Pimple should join his company by resuming cohabitation. In fact, on getting negative answer, he went to the house of his in-laws all the way from his native place in Ahmadnagar District with an intention to take back his wife P.W.No.4 Sunita Pimple. He was not armed with any weapon when he visited the house of his in-laws. Refusal by his father-in-law to allow him to take back his wife resulted in the incident in question, in which the appellant/accused had taken a wooden log available nearby to assault his father-in-law and to cause injuries to his wife and his brother-in-law. As seen from the evidence of the Autopsy Surgeon, the dead body was having only one injury on the head which ultimately caused death. Obviously, it must be a single blow. Considering the totality of the circumstances, I am of the considered opinion that sentence of

seven years rigorous imprisonment for offence punishable under Section 304 Part II of the IPC is not proportionate to the circumstances of the case in which the crime was committed. Therefore, the same is scaled down to rigorous imprisonment for five years. However, sentences imposed on the appellant/accused for rest of the offences cannot be faulted with. As such, the Order :

ORDER

- (i) The Appeal is partly allowed.
- (ii) Conviction of the appellant/accused for the offences punishable under Sections 304 Part II, 323 and 325 of the Indian Penal Code is maintained. Similarly, sentences imposed on him for the offences punishable under Sections 323 and 325 of the Indian Penal Code are also maintained.
- (iii) However, for the offence punishable under Section 304 Part II of the Indian Penal Code, the appellant/accused is directed to undergo rigorous imprisonment for five years apart from payment of fine of Rs.1000/- and in default of payment of fine, he should undergo simple imprisonment for one month.

- (iv) Needless to mention that all substantive sentences shall run concurrently.
- (v) With this modification in the sentence, the Appeal stands disposed of.

(A.M.BADAR J.)