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

CRIMINAL APPEAL NO. 324 OF 2014

**1] MARUTI APPAYYA NAIK
2] APPAYYA MARUTI NAIK
3] SATYAPPA MARUTI NAIK**

..APPELLANTS

Vs

STATE OF MAHARASHTRA

..RESPONDENT

Dr. Yug Mohit Chaudhary for Appellants.
Mr. A.R. Kapadnis, APP for State.

**CORAM : A.S.GADKARI, J.
DATE : 12th MARCH 2018.**

P.C.:

1] The appellants have been convicted under Section 304 Part-II read with 34 of the Indian Penal Code and are sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.1000/- each, in default of payment of fine to further undergo rigorous imprisonment for three months each by the Judgment and Order dated 12th September 2012 passed by the learned Additional Sessions Judge, Gadhinglaj in Sessions Case No.6 of 2012. The said Judgment and Order is impugned herein.

2] Heard Dr. Yug Mohit Chaudhary the learned Counsel appearing for the appellants and Shri Kapadnis, the learned APP for the State. Perused the entire record.

3] The prosecution case in brief is that, the appellant No.1 Maruti A. Naik is the real brother of deceased Channappa Naik. The appellant Nos.2 and 3 are the sons of appellant No.1 Maruti Naik. The houses of the appellant No.1 Maruti A. Naik and deceased Channappa are adjacent to each other and are situated at village Tirmal, Taluka Candgad, District-Kolhapur. There used to be persistent disputes between the said two families over the water flowing from the gutter which was passing through the house of the appellants. On 19.6.2011 at about 9.00 p.m. a quarrel took place between the appellant No.1 and deceased Channappa over the said reason of flowing of water from the gutter through the house of the appellants. PW No.1 Appaji Naik was having his dinner in his house. He heard the commotion outside his house and therefore he alongwith his brother and other family members came out. He saw that a quarrel was going on which ensued in a tiff and the appellant No.1 thereafter caught hold deceased Channappa from back side. That the appellant No.2

Appayya Naik and appellant No.3 Satyappa Naik each inflicted blows one after other with a stick on the head of the deceased Channappa. That deceased Channappa collapsed on the spot and became unconscious. PW No.1 Appaji Naik and other family members took deceased Channappa to a hospital next day in the morning.

The first information report came to be registered at the instance of PW No.1 Appaji Naik on 20.6.2011 with Chandgad Police Station, District Kolhapur under Section 307, 506 read with 34 of the Indian Penal Code. During the course of investigation, the appellants came to be arrested on 22.6.2011. Channappa succumbed to injuries while undergoing treatment in the hospital on 24.6.2011. After the death of Channappa, Section 302 of Indian Penal Code was added to the present crime. After completion of investigation, the police submitted chargesheet in the Court of Judicial Magistrate First Class, Chandgad, District-Kolhapur.

4] Since the offence punishable under Section 302 of the Indian Penal Code was exclusively triable by the Court of Sessions, the Judicial Magistrate First Class, Chandgad, District-Kolhapur committed the said case to the Court of Sessions at Gadhinlaj, District-Kolhapur as contemplated under Section 209 of the Cr. P.C. The learned Additional Sessions Judge

framed charge below Exhibit-7. The said charge was read over and explained to the appellants, to which they denied and claimed to be tried.

5] The prosecution in support of its case, examined in all 16 witnesses. The Trial Court after recording evidence and after hearing the parties to the said case, convicted the appellants for the offences punishable under Section 304 Part-II read with Section 34 of the Indian Penal Code by the impugned Judgment and Order dated 12th September 2012.

6] The perusal of evidence available on record would indicate that, on 19.6.2011 a quarrel took place between deceased Channappa Naik on one hand and the appellants on the other hand. The said quarrel ensued in a sudden fight and in the hit of passion, the appellant No.1 caught hold of the deceased Channappa Naik from behind and the appellant Nos.2 and 3 gave one blow each with a stick on the head of the deceased Channappa Naik. That deceased Channappa got unconscious and collapsed on the spot. The evidence on record further indicates that, PW No.1 Appaji Naik and other family members took Channappa to their residence and it is only in the morning of 20.6.2011, they took Channappa to the hospital for medical treatment. It appears from record that, in the intervening night of 19.6.2011 and morning of 20.6.2011, the witnesses/family members of

deceased in the present crime did not think it necessary to take deceased Channappa to the hospital, though his condition was stated to be serious. The deceased Channappa was thereafter admitted to the hospital in the morning of 20.6.2011 at Belgaum where he succumbed to injuries on 24.6.2011.

7] That PW No.16 Dr. Raju Patil has deposed that, during the course of postmortem examination (autopsy) he noticed two external injuries on the body of deceased namely i) sutured wound of 6 cms over right temporal region and ii) injury of 4 cms x and 3 cms behind injury No.1 which were in bleeding condition. No other external injury was found. In his cross-examination, the said witness has admitted that the Injury No. (ii) was possible due to a fall on stone. The eye-witnesses to the incident have stated that due to a blows given by the appellant Nos.2 and 3, Channappa collapsed on the spot. It therefore appears that the injury No.2 was probably caused to Channappa when he fell on the ground.

8] After perusal of the evidence on record minutely, this Court is of the considered opinion that the present crime was committed by the appellants without premeditation but in a sudden fight and in the hit of passion which ensued due to sudden quarrel and therefore the Trial Court

has rightly convicted the appellants under Section 304 Part-II read with 34 of the Indian Penal Code.

9] While recording finding on the point of sentence, the Trial Court has observed that, there is no criminal background to the appellants. However, only for the reason that the water from tap of deceased was flowing from the gutter passing from the house of the appellants, appellants have caused the death of Channappa, therefore exemplary sentence is necessary to be imposed upon the appellants. It appears that the Trial Court has awarded maximum sentence to the applicants without assigning proper reasoning.

10] It is submitted by the learned Counsel for the appellants that, since the date of their arrest i.e. 22.6.2011 the appellant Nos.2 to 3 have undergone actual imprisonment of six years and nine months. That the appellant No.1 was released on bail during the pendency of appeal and till date he has undergone sentence of six years and two months.

11] As noted earlier, the appellants did not had intention to commit murder of the deceased Channappa and it is only because of a sudden quarrel which ultimately ensued into assault because of which after a period of four days from the date of assault ultimately the death of

Channappa occurred.

12] In view of the peculiar facts and circumstances of the present case, this Court is of the view that the maximum sentence imposed upon the appellants i.e. of ten years of rigorous imprisonment is little harsh punishment for them. This Court is of the considered view that sentence of seven years of rigorous imprisonment would subserve the ends of justice.

Hence, the following Order:

- (i) The conviction of the appellants under Section 304 Part-II read with 34 of the Indian Penal Code is upheld. Fine imposed by the Trial Court is maintained.
 - (ii) However, the sentence of rigorous imprisonment is reduced from ten years to seven years.
 - (iii) Appellants are entitled for set-off for their substantive sentences under Section 428 of Cr. P.C for the period which they have already undergone in imprisonment.
- 13]** Appeal is partly allowed in the aforesaid terms.

(A.S.GADKARI, J.)