

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.241 OF 2002

State of Maharashtra

..Appellant  
(Org. Complainant)

Versus

Arun Pandurang Palav,  
age 44 years, R/o Sundarwadi Post  
and Tal. Mahad, Dist. Raigad

..Respondent  
(Org. Accused)

Mr. Ajay Patil, APP for the Appellant - State.

Ms. Chaitrali Deshmukh, Advocate appointed for the Respondent.

CORAM : PRADEEP NANDRAJOG, C.J. &  
SMT. BHARATI DANGRE, J.  
DATE : 14<sup>th</sup> AUGUST, 2019

**ORAL JUDGMENT** (Per Pradeep Nandrajog, C. J.)

1] Sent for trial for having murdered Ramchandra Pawar in the night of 05.05.1999, vide impugned judgment dated 23<sup>rd</sup> October 2001, the Respondent has been convicted for the offence punishable under Section 304 Part II IPC and has been sentenced to undergo rigorous imprisonment for a period of three years.

2] The impugned judgment believes the case set up by the prosecution that the deceased was hit on his head twice by an axe causing, proved by the postmortem report Exh.13, two spindle shaped injuries on the skull resulting in a compound fracture of the occipital

bone with laceration of the brain and intracranial hemorrhage. Death was caused shock due to cardiorespiratory failure.

3] The view taken by the learned Trial Judge is that the witnesses of the prosecution spoke half truth evidenced by Exh.34 being the MLC of the Respondent when post arrest on 07.05.1999 he was produced before the doctor at the Civil Hospital, Alibaug, District Raigad. The same records multiple abrasions on the thigh, skull as also multiple contusions. It records abrasion and contusion in the fore arm. It records a fracture of the right ulna bone. The said injury has been opined to be grievous. The eye witnesses cited by the prosecution give a version as if the accused assaulted the deceased. They did not explain the injuries on the accused. Since the injuries caused were multiple, one of which was a grievous injury, the learned Judge has taken the view that it appears to be a case of mutual assault, origin whereof was not investigated and therefore not presented to the Court, thus the view formed that for the act committed by the Respondent the offence committed is a culpable homicide not amounting to murder punishable under Part II of Section 304 of IPC.

4] The motive alleged by the prosecution was the accused having illicit relationship with the wife of the deceased. This would obviously be a double edged weapon. It could be a motive for the accused to assault the deceased. It could be a motive for the deceased to assault the accused.

5] Process of criminal law was set into motion when Vijay

More (PW-1) lodged the report Exh.25 at Police Station, Mahad City informing that the deceased Ramchandra Pawar had gone to the field in the night to answer nature's call. He suddenly heard shouts and recognized the voice of the deceased. He, alongwith Shankar Pawar (PW-2) and Pandurang More (PW-3) responded to the cries of distress. The field was across the Mumbai-Goa Highway which was lit. They saw accused assaulting Ramchandra Pawar with an axe. He i.e. Vijay tried to rescue Ramchandra Pawar by snatching the axe and himself got injured at the scuffle. The accused managed to escape from the spot with the axe.

6] The deceased was taken to the Rural Hospital, Mahad. The Police Sub Inspector S. D. Shelar (PW-8) conducted the initial investigation. Due to the head injuries the deceased had died and Dr. Smt. Sanghvi conducted the postmortem. We have already referred to herein-above the postmortem report.

7] On being arrested, the accused made a disclosure statement and got recovered an axe. He being found to be in an injured condition, as noted above, was taken to the Civil Hospital, Alibag where his MLC Exh.34 was drawn up.

8] Statements of Shankar Pawar and Pandurang More were recorded under Section 161 of Cr.P.C. in which they stated in sync with what Vijay More has stated in Exh.25.

9] At the trial PW-1, PW-2 and PW-3 deposed facts in sync

with Exh.25 and relevant would it be to highlight that they did not explain the injuries on the person of the accused.

10] Examined under Section 313 of Cr.P.C. when the incriminating circumstances were put to the accused, he took the defence that the deceased and the three stated eye witnesses had lured him to the field and it was he who was assaulted. Of course he denied using an axe to cause injuries on the head of the deceased. It is apparent that even the Respondent told half truth.

11] But the totality of the evidence brings out that the prosecution has not made any attempt to ascertain the origin of the fight. The prosecution has not explained the injuries on the person of the accused and therefore the view taken by the learned Trial Judge that it appears to be a case of mutual fight without there being any intention on the part of the accused to murder the deceased cannot be faulted with because it is a reasonable and plausible view.

12] Concurring with the view taken by the learned Trial Judge that at best case made out against the accused is of having committed an offence punishable under Section 304 Part II IPC, we dismiss the Appeal.

**SMT. BHARATI DANGRE, J**

**CHIEF JUSTICE**