

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 604 OF 1997**

Shri Chacha @ Gulam Ahmed

Vahid-uzma Shaikh

Age about 62 years, Occ. Business,

Resident of Ambedkar Nagar,

Zopadpatti, Pune.

(At present detained in Yervada

Central Prison, Pune 411 006)

..Appellant.

v/s.

The State of Maharashtra.

..Respondent.

Mr. S.R. Phanse i/b. Mr. M.K. Kocharekar, advocate for appellant.

Mr. S.R. Agarkar, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J.**

**DATE : SEPTEMBER 26, 2019.**

**JUDGMENT :**

1        The appellant herein is convicted for the offence punishable under section 304 part II of the Indian Penal Code and is sentenced to suffer R.I. for 5 years and to pay fine of Rs. 1000/- I.d. to suffer R.I. for two months, by 6<sup>th</sup> Addl. Sessions Judge, Pune vide Judgment and Order dated 17/9/1997 in Sessions Case No. 211 of 1997. Hence, this appeal.

2        Such of the facts necessary for the decision of this

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appeal are as follows :

(i) On 6<sup>th</sup> April, 1997 there was a quarrel between Toraswami Devendra(deceased) and his wife Kantaya. That he had returned home under influence of alcohol. He was a known alcoholic. He was insisting upon his wife Kantaya(P.W.1) to serve meals forthwith. On that count, there was a quarrel between the husband and wife. Their voices had reached a high pitch.

(ii) The accused (appellant) who was residing in the same vicinity had intervened in order to stop them from quarreling. He had seen that P.W. 1 was being harassed by her husband. That her husband had also assaulted her. Hence, the accused/appellant intervened between them.

(iii) Toraswami had questioned the appellant about his authority in intervening in quarrel between the husband and wife and at that juncture, the appellant had slapped him.

(iv) Soon thereafter, P.W. 1 had left her house to go to her sister's house. The appellant had also returned to his own house. Within no time, their daughter namely Laxmi had rushed to her mother and informed her that the accused/appellant had assaulted her father Toraswami with stick on his head and that

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her father had collapsed in front of his house. P.W. 1 rushed to the scene. She saw her husband lying in front of the house of the appellant.

(v) She thereafter, approached police station and lodged report as she had realised that her husband had succumbed to the injury and had expired. She narrated the incident to the police, on the basis of which Crime No. 96 of 1997 was registered against the accused/appellant for the offence punishable under section 302 of the Indian Penal Code at Swargate Police Station.

(vi) The investigation was set in motion and after filing of the charge-sheet, case was committed to Sessions and registered as Sessions Case No. 211 of 1997.

3 The prosecution examined as many as 8 witnesses to bring home the guilt of the accused. However, the case rests upon the evidence of P.W. 1 Kantaya, wife of the deceased. P.W. 2 Laxmi, daughter of the deceased and P.W. 3 Dr. Sudhir Nanadkar, who had performed autopsy on the dead body of the deceased.

4 P.W.1 Kantaya happens to be the wife of the deceased.

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She has deposed in consonance with the first information report, which is marked at Exh. 10. She has stated that the appellant was residing near their house. Upon seeing her in distress and being abused at the hands of her husband, the appellant had taken liberty of intervening. He had slapped her husband and restrained him from harassing her any further. Thereafter, she had left the house to go to her sister's house. Her sister was residing near Laxminarayan Theatre. After about half an hour her daughter, who was about 11 years old, had rushed to her and informed her that her father was assaulted by the appellant in front of his house and that he had fallen down. She has categorically admitted that when the appellant had intervened, his intervention was disliked by her husband and he had abused him by saying that he has no business to interfere between the husband and wife. She has also admitted that on the date of the incident, the deceased had returned home under the influence of alcohol. That the appellant had in fact, requested him to keep quiet and not to abuse P.W.1. She has also admitted that soon after the incident, the appellant had left their house.

5 P.W.2 Laxmi has deposed before the Court that on the day of the incident, after quarrel between her parents, she was playing outside her house. That her father was assaulted in

front of the house of the accused/appellant. She has deposed that her father was only crossing the house of the accused and at that time, he was assaulted. She identified the stick with which her father was assaulted. She has admitted in the cross-examination that when her father was passing from the lane, number of persons had gathered there. She has noticed that her father had sustained bleeding injuries. She has also admitted that just before recording of her deposition, she was informed about the statements to be given.

6           The prosecution has examined P.W. 2 Laxmi as an eye witness. Upon perusal of the scene of offence panchanama, which is at Exh. 22, it is clear that the appellant was not residing in front of the house of the deceased but his house was located diagonally across the house of the deceased. Moreover, there was a tin shed adjacent to his house. Admittedly, it is a slum area which was a crowded locality. Even according to the child witness, when her father came out of his house, several people had gathered. In this circumstance, it would be difficult to believe that she had seen the assault on her father by the accused/appellant.

7           P.W. 3 Dr. Sudhir Nanadkar had conducted autopsy on the dead body of the deceased. He has categorically stated that

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the stomach contained about 250 c.c. pale brown fluid. The report of the Chemical Analyzer would show that there was 250 c.c. of Ethyl alcohol in his blood. It is also admitted that there was congestion of lung and heart and other abdominal organ because of consumption of alcohol. The injuries sustained by the deceased are in the nature of contusion and abrasions. There is no fracture of scalp. But there was haematoma on the location of the injury. Contusion was on left temple lateral to left eyebrow. Internal injuries shows bilateral subdural and sub-archnoid haemorrhage. Column No. 20 would indicate as follows :

20. Thorax-

|                                 |                           |
|---------------------------------|---------------------------|
| (a) Walls, ribs, cartilages     | N.P.                      |
| (b) Pleura                      | N.P.                      |
| (c) Larynx, Trachea and Bronchi | N.P.                      |
| (d) Right Lung                  | Congested x oedematus     |
| (e) Left Lung                   |                           |
| (f) Pericardium                 | 300 gms.                  |
| (g) Heart with weight           | Cardiomegaly with Gr.II   |
| (h) Large vessels               | aortic- athero sclerosis. |
| (f) Additional remarks          | Congested.                |
|                                 |                           |

8 Upon perusal of the factual aspect of the matter, it is more than clear that the appellant herein had tried to be a good

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Samaritan. He had intervened between the husband and wife only to save P.W.1 wife of deceased. She was in distress. He could not approve of the nonchalant behaviour of the deceased.

9           The learned Counsel submits that being aggrieved by the interference of the appellant, the deceased, while passing in front of the house of the accused must have either abused or invited provocation from the appellant. The appellant without any premeditation, on the spur of the moment had probably assaulted the deceased, which turned out to be fatal. He had not taken any undue advantage of the situation.

10          Learned Counsel further submits that the case would fall under Exception 4 of Section 300 of the Indian Penal Code, which reads as follows :

*“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.”*

11          The learned Counsel has submitted that a different

view could be taken in the facts of the case, as presented by him and in view of the same, the appellant deserves to be acquitted. Moreover, the substantive evidence of P.W. 2 would indicate that she was tutored prior to her deposition being recorded.

12        It is true that the prosecution has failed to adduce evidence in respect of the circumstances, in which the incident has occurred, since it is not possible to place implicit reliance upon the evidence of the child witness, as it does not appear to be a sterling testimony.

13        In view of the above discussion, the appellant deserves to be acquitted of all the charges levelled against him, as the prosecution has failed to prove the guilt of the accused/- appellant beyond reasonable doubt. Hence, following order is passed :

#### **ORDER**

- (i)        The appeal is allowed.
- (ii)       The Order of Conviction and sentence passed by 6<sup>th</sup> Addl. Sessions Judge, Pune vide Judgment and Order dated 17/9/1997 in Sessions Case No. 211 of 1997 is hereby quashed and set aside.
- (iii)      The appellant is hereby acquitted of all the charges

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levelled against him.

- (iv) Fine amount, if paid, be refunded.
- (v) Bail bond stands cancelled.
- (vi) Writ be issued forthwith.

14 The appeal is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]