

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

**CRIMINAL APPEAL NO. 513 OF 2012**

Sonu Virendra Chavan,

An adult, residing at Barrack No.1365,

Opp.Maratha Section, Ulhasnagar- 4,

District- Thane.

At present:- Kalyan Dist. Jail.

... Appellant.

V/s.

The State of Maharashtra

... Respondent.

Dr.Yug Mohit Chaudhary with Payoshi Roy and Ragini Ahuja  
for the appellant

Ms.P.P.Shinde, APP for the respondent- State.

**CORAM : A.S.OKA AND A.S.GADKARI, JJ.**

**DATE : 3<sup>rd</sup> January 2019.**

**ORAL JUDGMENT :** (Per A.S. Oka, J.)

The appellant has taken an exception to the impugned judgment and order dated 13<sup>th</sup> January 2012 by which he was convicted for the offence punishable under section 302 of Indian Penal Code (for short "IPC") and was sentenced to suffer imprisonment for life and to pay fine of Rs.500/-.

2. Before we deal with the facts of the case, we must note here that the only submission of the learned counsel appearing for the appellant is that the case of the appellant will fall under Exception 4 to section 300 of IPC and, therefore, at highest, the offence punishable under section 304 of IPC would be attracted.

3. As per the case of the prosecution, the appellant- accused and the deceased were employed in the same shop. The incident is of 12<sup>th</sup> June 2009 and the deceased succumbed to the injuries on 16<sup>th</sup> June 2009. The case of the prosecution is that the appellant and the deceased were working in the same shop and used to sleep in the said shop. The prosecution case is that P.W.6- Manoj, on 12<sup>th</sup> June 2009 at 1.30 a.m., called the complainant- Tukaram (P.W.1) as the said Manoj heard shouts from the said shop. The P.W.1- Tukaram, therefore, went to the shop when he found that the rolling shutter of the shop was closed. He knocked the shutter and called his servants who were sleeping in the shop. The accused opened the shutter after some time. The explanation for delay in opening the shutter by the accused was that he was changing the clothes. P.W.1- Tukaram found that clothes of the appellant were smeared with blood. He noted that the deceased Ashish was lying in the pool of blood and even there was a blood on the clothes of his person. He saw a sickle and a paper cutter and a blade lying on the spot. When P.W.1 enquired with the appellant- accused as to what transpired, the appellant disclosed that there was a quarrel between him and the

deceased. Thereafter the appellant went away. His sons and the said Manoj informed the Police about the incident. The victim was admitted to Central Hospital, Ulhasnagar for medical treatment who was later on shifted Municipal Hospital at Sion, Mumbai. It is claimed by the prosecution that the victim was unconscious till his death. As stated earlier, the death occurred on 16<sup>th</sup> June 2009.

4. The prosecution examined 10 witnesses. P.W.2- Jaganath is a witness to the spot Panchanama. P.W.3- Karansing is a witness who claims that he saw the appellant leaving the shop in which the deceased was found. P.W.4- Mukund is a Panch witness for the arrest of the appellant and recovery of blood stained clothes. P.W.4 was the owner of the shop where the deceased and the appellant were working. P.W.5- Ganesh is a person who stated that he saw the accused wearing the blood stained jean on 12<sup>th</sup> June 2009. P.W.7- Shivaji is a Panch witness to Arrest Panchnama. P.W.8 and P.W.10 are the Police Constable and the Investigating Officer respectively. P.W.9 is the Medical Officer who performed surgery.

5. The learned counsel appearing for the appellant has taken us through the notes of evidence. His submission is that going by the evidence of the prosecution, there was a quarrel between the appellant and the deceased just before the incident. He pointed out that there is no evidence adduced by the prosecution for showing the condition of health of the victim from 12<sup>th</sup> June 2009 to 16<sup>th</sup> June 2009. He pointed

out that though the case of the prosecution appears to be that the deceased was unconscious throughout, the medical papers of the hospital at Ulhasnagar and Sion Hospitals have not been produced for showing the medical treatment extended to the victim and he was unconscious. He invited our attention to postmortem notes and evidence of P.W.9-Dr.Dere. He pointed out that Dr.Dere deposed that injuries at serial Nos.1, 2, 3 and corresponding internal injuries were grievous in nature and injury Nos.1, 2, 15 and corresponding internal injuries are sufficient in the ordinary course of nature to cause death. He pointed out that injury No.2 is a sutured incised wound and there is no statement made in the deposition of Dr.Dere that he opened the wound. He pointed out that even the injury Nos.8 and 9 are sutured wounds which were not opened by the said Medical Officer who performed autopsy. He would, therefore, submit that the opinion of the doctor that injury No.2 is of grievous nature and sufficient in ordinary course of nature to cause death cannot be accepted. His submission is that as second part of section 304 is attracted and as from the date of arrest i.e. 13th June 2009, the appellant was never released on bail, the appellant be ordered to be released immediately.

6. The learned APP supported the impugned judgment and order by pointing out the evidence of prosecution witnesses.

7. We have given careful consideration to the submissions. We have also perused the evidence of the prosecution witnesses and other

material on record. P.W.1- Tukaram is the employer of the appellant and the deceased. He himself deposed that the appellant and the deceased were sleeping together in the same shop which was taken by him on rent from P.W.4- Manoj. After receiving information from P.W.6- Manoj that shouts were heard from the shop premises, he went to the shop premises and knocked the shutter of the premises which was opened by the appellant after some time. He himself deposed that the appellant accused told him that there was a quarrel between him and the deceased.

8. The prosecution witness No.5- Ganesh claimed that on 12<sup>th</sup> June 2009 firstly he received three missed calls of the accused on his cellphone which were seen by him at 6.05 a.m. Thereafter, the appellant-accused came to his house. He noticed that the appellant was wearing only trouser (jeans pant) and was not wearing shirt. He noticed blood stains on trouser on the person of the appellant as well as on his person. The appellant demanded a T-Shirt which was provided by the witness. The witness further stated that the appellant informed him that there was a quarrel at the work place. P.W.6- Manoj is the person who informed P.W.1- Tukaram when he heard shouting from the shop. P.W.1 and P.W.5 have stated in their examination-in-chief that there was a quarrel between the appellant and the deceased before the incident.

9. As stated earlier, the incident occurred early in the morning on 12<sup>th</sup> June 2009 and the deceased succumbed to the injuries on 16<sup>th</sup> June 2009. Perusal of the evidence on record shows that the prosecution

has not produced medical papers of Central Hospital, Ulhasnagar and Sion Hospital, Mumbai where the deceased was taken for treatment. The doctor who examined the deceased after he was admitted in the hospital and the doctor who treated the deceased have not been examined. As pointed out earlier, though the prosecution case is that the deceased was unconscious throughout, this fact is not established by producing medical papers and by examining the concerned medical officer. As pointed out earlier, according to P.W.9- Dr.Dere, three injuries i.e. Injury Nos.1, 2 and 15 and corresponding internal injuries mentioned in column No.19 in postmortem notes were sufficient in the ordinary course of nature to cause death. But the injury No.2 was a sutured incised wound which was not opened by Dr.Dere. P.W.1-Tukaram was the employer of both the appellant and the deceased. He has not stated that the appellant and the deceased were on inimical terms and had fights between them. Therefore, the evidence of the prosecution itself shows that when the appellant and the deceased were sleeping together in the shop in which they were working, there was a sudden fight between them immediately preceding the incident of assault by the appellant on the deceased. As narrated earlier, the death has occurred on the fifth day after the assault by the appellant on the deceased. Therefore, the learned counsel appearing for the appellant is right in contending that exception-4 to section 300 will apply. Considering the evidence on record, it cannot be said that there was an intention on the part of the appellant to cause death of the deceased. Therefore, in our view, the appellant cannot be held to be guilty of the offence punishable under section 302 of IPC and

will have to be held guilty of offence punishable under second part of section 304 of IPC.

10. Considering the facts of the case, we propose to impose sentence of rigorous imprisonment of ten years on the appellant.

11. Accordingly, the appeal succeeds in part and we pass the following order:

- (i) The impugned judgment and order dated 13<sup>th</sup> January 2012 is modified by setting aside the conviction and sentence of the appellant for the offence punishable under section 302 of IPC;
- (ii) The appellant is hereby convicted for the offence punishable under second part of section 304 of IPC and is sentenced to undergo rigorous imprisonment for a period of ten years;
- (iii) Appeal is partly allowed on the above terms;
- (iv) All concerned to act on an authenticated copy of the operative part of the order.

(A.S.GADKARI, J.)

(A.S.OKA, J.)