

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.501 OF 2016

Mohammad Amir Shaikh Mohammad
Age-23 years, Occ-Labour,
R/o Rayabi Rajanipur,
Antu Police Station, Tq. Sadar Bazar,
Dist. Pratpgadh (Uttar Pradesh)

..APPELLANT

VERSUS

The State of Maharashtra

...

Ms. Seema T. Pawar h/f Mr.A.G. Talhar, advocate
for the appellant.

Mr.S.P. Deshmukh, APP for the respondent/State.

...

CORAM : V.K. JADHAV

AND

SHRIKANT D. KULKARNI, JJ.

DATE : 12TH OCTOBER, 2021

ORAL JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. This appeal is preferred by the appellant/original accused, feeling aggrieved and dissatisfied by the impugned judgment and order of conviction passed in Sessions Case No.126 of 2015 by the Additional Sessions Judge, Jalgaon, thereby convicting him to suffer imprisonment for life and pay fine of Rs.5,000/-, and in default to suffer further imprisonment for one year, for the offence punishable under section 302 of the Indian Penal Code (for short, "the IPC").

2. The facts of the prosecution case in narrow compass are as under :-

There is one U.P. Bombay Hotel/Dhaba and Transport (Restaurant and Transport Firm), at Nashirabad, Tq. & Dist. Jalgaon. Many trucks used to halt there for lunch, dinner and tea. Riyajoddin Mahmad Yusuf, resident of Nashirabad, is the owner of the said Bombay Dhaba. Mrutyanjay Jayprakash Tiwari (first informant) is working there as a Manager since last three years.

3. On 15.07.2015 about 8.30 a.m., Goods truck bearing No. UP-33 AT 2639 arrived at Bombay Dhaba. Rajkumar Singh Suryadin Singh (since deceased) was the truck driver. The deceased was well known to the first informant since so many times, he had come to Bombay Dhaba. One unknown person (Accused/Cleaner) was also with the deceased. After parking truck in the campus of U.P. Bombay Dhaba, the deceased had bath. The deceased and accused (Cleaner) had lunch about 12.00 noon. There was quarrel between the deceased and the accused on account of cleaning of truck. The deceased had given abuses to the accused. Afterwards the deceased slept on wooden plank/table. The accused was watching T.V. by sitting in Dhaba.

4. It was about 1.00 p.m., the first

informant was as usual discharging his work. He witnessed that the accused was beating to the deceased on his head by wheel spanner. The accused was about to give 2nd blow when the deceased raised shouts. In response, the first informant and other drivers and persons present there rushed to the spot. Meanwhile, the accused gave another blow by wheel spanner on the head of the deceased and attempted to flee away by throwing the wheel spanner, but the accused was caught hold by the persons gathered there. The first informant noticed that there were serious bleeding injuries to the backside of head of the deceased. The first informant immediately informed to the Police by making phone call. In response, the Police rushed to the U.P. Bombay Dhaba, Nashirabad. The deceased was found dead when the Police reached there. The Police had taken the accused into custody and asked his whereabouts and details. The first informant also gave information to the owner of U.P. Bombay Dhaba as well as relatives of the deceased.

5. The manager of Dhaba/first informant lodged FIR about the incident with Nashirabad Police Station and on that basis, crime No.74/2015 came to be registered against the accused for offence punishable under section 302 of the IPC.

6. The investigation was entrusted to API Sarthak Nahate. The Investigating Officer prepared panchanama of scene of offence and also seized wheel spanner stained with blood. He also seized clothes of the deceased and accused. The important witnesses were referred to the Judicial Magistrate, First Class, Jalgaon for recording their statements under section 164 of the Criminal Procedure Code. After transfer of API Nehate, the remaining part of investigation was conducted by Mr. Rohidas Pawar, S.D.P.O., Bhusawal. He filed charge-sheet against the accused for the offence punishable under section 302 of the IPC, after completion of investigation.

7. After committal of the case, the trial was commenced before the Additional Sessions Judge at Jalgaon. The prosecution machinery has examined in all nine witnesses to prove the charge of murder against the appellant/accused.

8. The defence of the accused is of denial. According to the accused, he has been falsely foisted upon in this case. While recording the statement under section 313 of the Criminal Procedure Code, the appellant/accused has given his written say and contended that one Sonu, a relative of the deceased was accompanied at the time of incident. The deceased was having

Rs.3,00,000/- and Sonu was knowing this fact. Sonu was demanding money to the deceased and there was quarrel. Sonu made attack on the deceased on account of money and murdered him and fled away. The Police have not conducted proper investigation on this line and falsely implicated him in this case. However, the accused did not prefer to adduce any evidence by way of defence.

9. Ms. Seema Pawar, the learned Advocate for the appellant vehemently submitted that the prosecution machinery has not examined real eye witnesses. The prosecution machinery has selected certain witnesses and projected them as eye witnesses. The evidence of so-called eye witnesses is not worthy of credence. It is difficult to accept that the deceased died due to single blow of wheel spanner. She submitted that there are discrepancies in the evidence of so-called eye witnesses. She submitted that the appellant/accused was suffering from psychological illness coupled with convulsions. She submitted that inquest panchanama, spot panchanama and seizure panchanama are highly doubtful.

10. By way of alternative submission, Ms. Seema Pawar, the learned counsel submitted that according to the prosecution case, the accused alleged to have given single blow on the

backside of head of the deceased. The deceased died on the spot due to single blow allegedly given by the accused by means of wheel spanner. There was no intention on the part of the accused to commit murder of the deceased. There were altercation of words between the deceased and accused. The deceased had given abuses to the accused and accused was annoyed and gave blow by means of wheel spanner on the head of the deceased. It indicates that it is a case of grave and sudden provocation. The appellant/accused cannot be held guilty for the offence of murder in absence of intention. The case in hand falls under section 304 Part-II of the IPC.

11. To buttress the argument, Ms. Seema Pawar, the learned counsel has placed reliance on the following citations :-

- (i) Shrimant @ Wantya Mokinda Pawar and another
V/s State of Maharashtra
2021(1) Bom. C.R. (Cri.) 343
- (ii) Stalin V/s State represented by the
Inspector of Police
2020(9) SCC 524
- (iii) Ankush Shivaji Gaikwad V/s State of
Maharashtra
2013 (2) Bom. C.R. (Cri.) 830.

12. Ms. Seema Pawar, the learned counsel by taking help of the above-said citations urged that the sentence awarded against the

appellant/accused needs to be modified. It is a case of homicidal death not amounting to murder and the impugned judgment and order of conviction needs to be modified. The accused may be held guilty under section 304 Part-II of the IPC.

13. Per-contra, Mr.S.P. Deshmukh, the learned APP for the State strenuously argued that it is a case based upon direct evidence. PW-1 - Mrutyanjay/first informant and PW-2 - Vishwanath, another truck driver are the eye witnesses to the incident. They had categorically stated about the participation of the accused in assaulting the deceased by using wheel spanner and causing murder. He submitted that the deceased was sleeping after having lunch. By taking undue advantage of that situation, the accused all of a sudden went to the deceased and gave forcible blow by means of wheel spanner on the backside of head of the deceased. It was forcible assault. The deceased raised shouts and in response PW-1 Mrutyanjay and PW-2 Vishwanath and other truck drivers rushed there and caught hold the accused on the spot when he was about to flee away. PW-4 Bhartilal is one more cleaner, who had seen the accused with blood stained wheel spanner. The evidence of above referred three witnesses is trust-worthy and reliable. There is no reason for them to speak against the accused. Their evidence is but natural and accordingly they have stated

before the Court. Their statements were recorded under section 164 of the Criminal Procedure Code before the J.M.F.C. and their evidence before the Court is consistent.

14. The wheel spanner came to be seized under the panchanama. The C.A. report indicates that the wheel spanner had blood stains with the blood group belonging to the deceased. He submitted that the postmortem examination and cause of death given by the Medical Officer clearly reveals that it is a case of homicidal death. It was a planned attack by the accused and not a case of grave and sudden provocation. The accused was sleeping on the wooden plank after having lunch. The accused was watching T.V. inside the U.P. Bombay Dhaba and after noticing the situation favourable, the accused all of a sudden went to the area where the deceased was sleeping and made attack on him by using wheel spanner. It shows that the accused had planned to commit murder of the deceased and executed it. Mr.Deshmukh, the learned APP submitted that it is not a case of homicidal death not amounting to murder under section 304 Part-II of the IPC, as argued by the learned Advocate for the appellant/accused.

15. He submitted that the trial Judge has considered all these aspects and rightly

appreciated the evidence of eye witnesses and convicted the appellant/accused under section 302 of the IPC. The findings recorded by the learned Trial Judge are based upon cogent evidence. The view taken by the learned trial Judge cannot be faulted with. The conviction and sentence awarded by the learned trial Judge needs to be upheld.

16. We have considered the submissions of Ms.Seema Pawar, the learned Advocate for the appellant/accused and Mr.S.P. Deshmukh, the learned APP for the respondent/State. We have also gone through the impugned judgment and order of conviction passed by the Additional Sessions Judge, Jalgaon, record and proceedings of the trial Court, the evidence of prosecution witnesses and documentary evidence relied upon by the prosecution agency.

17. The case in hand entirely rests upon direct evidence. Certainly, the evidence of eye witnesses plays important role in order to focus light as to how and in what manner the incident had occurred and the involvement of the accused.

EYE WITNESSES

18. There are two eye witnesses :-

- (i) PW-1 – Mrutunjay Jayprakash Tiwari Exh.10
first informant/Manager of U.P.Bombay
Hotel and Transport)

(ii) PW-2 – Vishwanath Datadin Yadav Exh.14
(another truck driver/eye witness)

19. We have carefully gone through the evidence of PW-1 Mrutyantjay/first informant, who is stated to be an eye witness. It is evident from the testimony of PW-1 Mrutyantjay, at the time of incident he was serving as a Manager at U.P. Bombay Hotel and Dhaba, Nashirabad. So many Goods trucks used to halt at Dhaba. He has disclosed that the incident took place in the month of July, 2015 about 12.00 noon.

20. The testimony of PW-1 Mrutyantjay further discloses that there was talk between the accused and the deceased and he had heard the same. After the talk was over, the deceased and the accused had cup of tea. Afterwards the deceased slept on wooden plank/takhta. There were 10-12 truck drivers present in Dhaba and they were watching T.V. He has further disclosed that all of a sudden, the accused went out of the hotel and brought wheel spanner/tomy of truck and assaulted the truck driver/deceased by giving 8 blows of the said wheel spanner on the head of the truck driver, who was fast asleep. He went on stating that the accused had made such a forcible attack on the deceased, so that he could not get even time to raise shouts and truck driver died on the spot. He himself and other truck drivers

rushed to catch hold the accused. The accused was caught hold when he was about to flee away with the help of other truck drivers.

21. He stuck to the contents of FIR vide Exhibit-11. While facing cross-examination, he has admitted that he is unable to read and right Marathi language. It is not any way sufficient to take doubt about his presence as an eye witness as well as putting the criminal law in motion by lodging the FIR. The last line of the FIR vide Exhibit-11 makes it clear that the contents of the FIR were read over to the first informant and the first informant put his signature thereon only after verifying the contents therein are true and correct. The first informant is working as a Manager at U.P. Bombay Hotel and Dhaba at Nashirabad and naturally he must be knowing little bit Marathi in view of his sufficient tenure at Nashirabad, Tq. & Dist. Jalgaon. Even though, he has stated that the accused had given 8 blows of said wheel spanner/tomy on the head of the truck driver, who had slept, found to be exaggerated version. It is tendency of the witnesses to exaggerate something before the Court. Minor omissions, improvements brought on record through the testimony of eye witness are not sufficient to discard his entire evidence, which is highlighting the incident in a true manner. In the case of *State of Madhya Pradesh*

V/s Chhaaki Lal and another reported in *AIR 2019 SC 381*, it is held by the Hon'ble Supreme Court that the evidence of an eye witness has great evidentiary value. The evidence of an eye witness cannot be discarded though testimony of eye witness found to be slightly improved. Therefore, the testimony of PW-1 Mrutyanjay cannot be discarded simply on account of slight improvisation. The defence has failed to bring on record any material during the cross examination of PW-1 Mrutyanjay, which may raise doubt about his role as an eye witness to the incident. On careful assessment and appreciation of evidence of this witness (PW-1), it is found that he is a natural witness to the incident. He has disclosed the true incident, which he had witnessed in the capacity of Manager of U.P. Mumbai Hotel and Dhaba. His evidence is found to be natural and goes hand in hand with the narration given him the FIR. There was no reason for PW-1 Mrutyanjay to speak against the accused when there is no enmity.

22. Now coming to another eye witness, PW-2 Vishwanath Yadav vide Exhibit-34. He disclosed that on the day of incident in the afternoon, he was also present in the same Dhaba. He has disclosed that deceased Rajkumarsingh was driver and accused Mohammad Amir was the cleaner of the truck. There were altercation of words between

the deceased and accused on account of cleaning of truck and both of them abused each other. His evidence further disclosed that the deceased had lunch and he was fast asleep on the wooden plank/takhta. He along with accused and other persons were watching T.V. All of a sudden the accused got up and reached near his truck. Accused gave blow by means of wheel spanner on the head of Rajkumarsingh (deceased). He had seen the accused while holding the wheel spanner in his hand stained with blood. The blood was oozing from the head injury of deceased. The accused tried to flee away but he was caught hold on the spot. Hotel Manager made phone call to the Police and Police arrived there. He has stated that he had seen the incident. He has also identified Muddemal Articles (1) wheel spanner, when it was shown to him in the witness box. The testimony of PW-2 Vishwanath is also found trustworthy and reliable. He has given the same narration which is given by PW-1 Mrutyanjay. The evidence of PW-2 Vishwanath is corroborating to the evidence of PW-1 Mrutyanjay. There is no material inconsistency regarding the main incident of attack made by the accused on deceased by using wheel spanner and causing fatal injury on backside of his head.

23. Ms.Seema Pawar, the learned Advocate for the appellant attempted to show that only

selected witnesses have been examined by the prosecution projecting them as an eye witnesses and all the eye witnesses were not examined. We do not find any force in the submissions of Ms.Seema Pawar, the learned Advocate for the appellant. To support our view, we would like to place reliance upon the judgment in the case of ***Shamsher Singh @ Shera V/s State of Haryana*** reported in ***AIR 2002 SC 3480***, wherein it is held by the Hon'ble Supreme Court that it is not necessary that in all cases all witnesses present at time of occurrence should be examined. Mere non-examination of one eye witness to speak on same point does not impair prosecution case when eye witnesses examined fully support the prosecution case. The quality of the evidence is to be considered and not the quantity of witnesses. Therefore, we do not find any merit in the submissions of Ms.Seema Pawar, the learned Advocate for the accused.

OCULAR EVIDENCE

24. Now coming to the evidence of PW-4 Bharatlal Patel, vide Exhibit-27, who is another cleaner, who had seen the accused with blood stained wheel spanner. On going through the testimony of PW-4 Bharatlal, it is evident that he was present at the time of incident at U.P. Bombay Hotel/Dhaba. It was 12 noon, when the

accused and the deceased had lunch. The deceased had given abuses in filthy language on account of cleaning of truck and thereafter, the deceased slept on a wooden cot/Takhta. He alongwith other 12 to 13 persons were watching T.V. from Veranda of U.P. Bombay Hotel and Dhaba. The accused was also watching T.V. The accused all of a sudden got up and went towards truck No.UP-33/AT-2639. After some time, he heard sound of blows. He looked towards deceased Rajkumarsingh. He saw that the accused was standing near Rajkumarsingh holding blood stained wheel spanner. He along with others rushed there. Accused tried to run away by throwing the wheel spanner but he was caught hold by him with the help of others.

25. The testimony of PW-4 Bharatlal Patel is supporting the evidence of above referred two eye witnesses. The evidence of PW-4 Bharatlal gave the exact picture what has happened and in what ways the accused had assaulted the driver/deceased by using wheel spanner. Accused was caught red handedly on the spot. The defence has failed to bring on record any material through cross-examination of PW-4 Bharatlal so as to disbelieve him. His presence was found to be natural at the time of incident as one of the cleaner of the trucks. He had no reason to speak against the accused and favour the deceased. There is no enmity between PW-4 and the accused.

Why the testimony of PW-4 Bharatlal should be looked by suspicion. His evidence must be believed when it is found trustworthy, reliable and corroborating the evidence of earlier two eye witnesses.

26. The evidence of PW-3 Pratibha Patil (vide Exhibit 17) discloses that she is a Judicial Magistrate, Jalgaon, who has recorded the statement of witnesses under section 164 of the Criminal Procedure Code. She has stated about the same. The above-referred stock of witnesses have also stated in view of their earlier statements recorded under section 164 of the Criminal Procedure Code.

27. PW-5 Ramesh Chirwande is a panch witness on seizure of clothes of deceased. Panchanama of the seizure of clothes of deceased is duly proved at his hands and same is vide Exhibit-30.

28. The evidence of PW-6 Sunil Pachpande vide Exhibit-31 discloses that he is another panch witness on inquest panchanama, panchanama of scene of offence and seizure of clothes of accused. The inquest panchanama vide Exhibit-32, seizure of clothes of accused vide Exhibit-34 and panchanama of scene of offence vide Exhibit-33 are duly proved at his hands.

29. Ms.Seema Pawar, the learned Advocate for the appellant vehemently submitted that PW-5 Ramesh Chirwande is an habitual panch witness and well acquainted with the Police. He has no personal knowledge about the panchanama of seizure of clothes of deceased vide Exhibit-30. She submitted that PW-6 Sunil Pachpande is a panch witness on inquest, spot and seizure panchanama, who happens to be a teacher. She pointed out that PW-6 Sunil has not taken written permission from the Headmaster to go out of the school during working hours to work as panch witness.

30. On careful scrutiny of the evidence of PW-5 Ramesh Chirwande, it is noticed by us that though this witness has stated that he does not know the contents of panchnama vide Exhibit-30 and Police did not seize anything in his presence, but at second breath he has stated that Articles 2 to 5 were seized in his presence under panchanama. The evidence of a witness needs to be read as a whole and not in piecemeal manner. The evidence of PW-5 – Ramesh Chirwande cannot be discarded only because he is well acquainted with the Police and he used to put his signatures whenever necessary on the panchanama, particularly when, he has categorically stated that Articles 2 to 5 were seized in his presence

under panchanama.

31. Now coming to evidence of PW-6 Sunil Pachpande vide Exhibit-31, another panch witness on inquest panchanama, seizure panchanama of clothes of accused and panch of scene of offence, his evidence discloses that on 15.07.2015, he was called by the Police at U.P. Bombay Hotel and Dhaba on National highway No.6 at Nashirabad for panchanama. He was accompanied by another panch witness Chaudhary. One person was lying dead and name of the deceased was Rajkumarsingh Suryadinsingh. He noticed injuries on the backside of head of deceased and there were blood stains. He has stated about the preparation of inquest panchanama in his presence, which is vide Exhibit-32. He has further disclosed about preparation of panchanama of scene of offence vide Exhibit-33. He has also disclosed about seizure of clothes of accused stained with blood under panchanama vide Exhibit-34. The testimony of this panch witness - a school teacher cannot be discarded only because he has not obtained the prior written permission of Headmaster. He is expected to respond to Police Officer when request is made to act as a panch witness. We, therefore, do not find much force in the submissions of Ms.Pawar, the learned Advocate for the appellant on this aspect. The prosecution has proved inquest panchanama vide Exhibit-32,

Seizure panchanama of clothes of accused vide Exhibit-34 and panchanama of scene of offence vide Exhibit-33 by taking help of evidence of PW-6 Sunil. The trial Court has discussed in detail as to how that evidence is reliable and we endorse the same view.

32. PW-8 Sarthak Nehate, API and PW-9 Rohidas Pawar, SDPO are the Investigation Officers. Major part of investigation seems to have been conducted by PW-8 Sarthak Nehate, API and small part of investigation seems to have been conducted by PW-9 – Rohidas Pawar, SDPO. Both of them have stated about their procedural part of investigation and supported to the prosecution case.

33. The defence has not specifically disputed the homicidal death of truck driver late Rajkumarsingh Suryadinsingh, however, it would be appropriate to have a glance on the medical evidence in order to find out, whether it is a case of homicidal death. PW-7 – Dr. Nitin Vispute, vide Exhibit-38 is a Medical Officer attached to Civil Hospital at Jalgaon. He has conducted postmortem examination on the dead body of Rajkumarsingh Suryadinsingh. He noticed following external injuries :-

"large avulsion over occipital region above nape of neck with clotted blood all over. Said injury was admeasuring 6 inches X 2 inches depth X 2 inches with crushed brain with underlying bone fracture, said bone was erushed."

PW-7 Dr. Nitin also noticed the following internal injuries:-

"large haematoma was present having size 20 Cm. X 10 Cm. Said haematoma was noticed on occipital region. Skull was crushed on occipital region 5 inches X 10 inches. Extra dural hemorrhage was noticed with crushed brain 20 Cm. X 10 Cm. X 10 Cm. The hemorrhage was blackish in colour."

According to PW-7 Dr. Nitin, the death of Rajkumarsingh Suryadinsingh was caused due to Extra Dural Hemorrhage due to head injury. The postmortem report vide Exhibit-39 is proved at his hands. He has further opined that the head injury sustained by Rajkumarsingh is possible by wheel spanner Article 1 when shown to him in the witness box. While facing the cross-examination Dr.Nitin confirmed that the head injuries noticed on the head of Rajkumarsingh is possible by one blow of wheel spanner if very much force is used while giving the blow even though person

sustaining injury is in sleeping position. He has further explained that immediately after such blow the person sustaining the injury may become unconscious. He went on explaining that small brain is situated in occipital region and injury caused by force on occipital region may cause immediate death.

34. Having regard to the medical evidence discussed above, it is very much clear that Rajkumarsingh died due to extra Dural Hemorrhage due to head injury. His death is falling in the category of homicidal death.

35. The question now remained to be answered is, whether it is a case of homicidal death amounting to murder or not amounting to murder and falling under section 304 Part II of Indian Penal Code. Section 304 of the Indian Penal Code provides punishment for culpable homicide not amounting to murder. The first paragraph of this section is normally referred to as Part I whereas the second paragraph as Part II. Part I applies where the accused causes bodily injury with intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part II, on the other hand, comes into play when death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part

of the accused either to cause death or to cause such bodily injury as is likely to cause death. Intention to cause the injury and not intention to cause death is relevant inquiry, as contemplated under section 300 of the Indian Penal Code. Where an intention to kill being present, the act would have amounted to murder, but for its having fallen within one of the *Exceptions* to section 300, and those cases in which the crime is culpable homicide not amounting to murder, that is to say, where there is knowledge that death will be a likely result, but intention to cause death or bodily injury likely to cause death is absent. If the act of the accused falls within any of the clauses 1, 2 and 3 of section 300 but is covered by any of the five Exceptions, it will be punishable under the first part. If the act comes under clause 4 of section 300 but is covered by any of the Exceptions, it will be punishable under the second part. The first part of this section applies where there is guilty intention and second part applies where there is no such intention, but there is guilty knowledge.

36. Ms.Seema Pawar, the learned Advocate has placed her reliance in the case of **Shrimant @ Wantya Mokinda Pawar and another V/s State of Maharashtra** (supra), wherein Division bench of this Court has altered the conviction from that

under section 302 to II Part of section 304 of the Indian Penal Code. On going through the facts of the case, it is noticed that accused inflicted second blow on non-vital part. No evidence that accused had pre-planned killing of deceased. Here, the facts of the case in hand are quite distinguishable. In the case in hand, the accused had made attack and inflicted one or two blows on vital part of the body of deceased i.e. head, who died on the spot. As such, it is not any way helpful to the appellant.

37. We have also gone through the citation in the case of **Stalin V/s State represented by the Inspector of Police (supra)**. In the cited case, the incident had occurred in a Beer Party and one death took place. The persons, who participated in the Beer party were friends and as such having considered the facts of the case, the Hon'ble Supreme Court held that Section 302 does not attract and the conviction is modified for offence punishable under Section 304 Part I of the Indian Penal Code in view of absence of intention. It was a case of single blow. The facts of the case in hand are distinguishable. Even though, it is a case of single blow, the intention of the accused needs to be gathered from the circumstances appearing from the evidence of two eye witnesses. It is very much clear from the evidence of two eye witnesses that

the deceased after having lunch slept on the wooden plank/Taktha. Accused was watching movie along with others. After some time, the accused went out of Dhaba and took out wheel spanner/tomy from his truck and rushed to the deceased where he was asleep. The accused had given a forcible blow by means of wheel spanner on the back side of head of deceased and caused grievous head injury. The blow was such forcible, the deceased had died on the spot. The medical evidence as discussed hereinbefore make it clear that a single blow of wheel spanner with force is given, it is sufficient to cause death in ordinary course of nature. The accused did not attack the deceased when he was taking lunch or simply sitting in Dhaba. The accused seems to have taken precaution and allowed the deceased to sleep. After noticing that the deceased had slept went out of Dhaba and picked up wheel spanner from his truck and then rushed to the deceased and assaulted him by using wheel spanner. It clearly indicates the intention of the accused to kill the deceased and the way in which he has executed his plan.

38. In the case of *Mahesh Balmiki Vs. State of M.P.* reported in *JT 1999(6) SC 279*, the Hon'ble Supreme Court, while deciding the question, whether single blow would attract Section 302 of the Indian Penal Code, held as

under :-

"9. there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the inquiry, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the inquiry is caused and the manner in which the inquiry is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife-blow given by him was so imminently

dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

39. Having regard to the legal position made clear by the Hon'ble Supreme Court, even in case of single blow in some cases, section 302 of the Indian Penal Code attracts in view of the nature of injury on the vital part of the body and the weapon used in commission of offence.

40. Ms. Seema Pawar, the learned Advocate for the appellant has also relied upon one more citation in the case of **Ankush Shivaji Gaikwad Vs State of Maharashtra (supra)**. We have gone through the same very carefully. The incident took place on sudden fight without pre-meditation and act of hitting was committed in heat of passion upon sudden quarrel, without appellant having undue advantage and cruel manner. It is held that nature of simple injury inflicted by accused, part of body on which it was inflicted, weapon used do not suggest appellant had intention to kill deceased. Again the facts of the cited case are distinguishable. In the present case, the accused has chosen occipital region of the head of the deceased, which is vital part and given blow by means of iron wheel spanner in such a forcible manner that in a single blow, the deceased died on the spot

because of Extra Dural Hemorrhage due to head injury. It clearly reflects his intention to kill the deceased and to cause grievous injury.

41. In the Criminal Justice System, statements of an eye witnesses play an important role in dispensation of justice. We have noticed that evidence of two eye witnesses brings out participation and involvement of the accused in making attack on deceased by means of wheel spanner/tomy. Certain minor variations and differences in their testimony cannot corrode the prosecution version. Minor contradictions in the statements of the eye witnesses need not be given much importance when their statements are found genuine and trustworthy. In cases of murder, eye witnesses are the important reliable witnesses in the eyes of law. We do not find any material to discard the evidence of abovereferred two eye witnesses and evidence of one witness on the point of ocular evidence. The prosecution has proved the charge of murder punishable under section 302 of the Indian Penal Code against the accused beyond reasonable doubt. It is not a case falling either under Part I or Part II of section 304 of the Indian Penal Code. The learned trial Judge has rightly appreciated the evidence of eye witnesses coupled with the aspect of intention in causing murder of the deceased at the hands of the accused by means of wheel spanner. The

findings recorded by the learned trial Judge are found proper and on the basis of cogent evidence. The view taken by the learned trial Judge cannot be said to be erroneous in the background of evidence of the prosecution witnesses discussed hereinbefore. We are not convinced by the argument advanced by Ms.Seema Pawar, the learned Advocate for the appellant to convert the case from section 302 of Indian Penal Code to Part I or Part II of section 304 of the Indian Penal Code. In view of facts of the case in hand, we do not find any merit in the appeal. It needs to be dismissed and the conviction awarded by the learned trial Judge needs to be upheld.

42. In the result, we proceed to pass the following order :-

ORDER

Criminal Appeal stands dismissed.

(SHRIKANT D. KULKARNI, J.)

(V.K. JADHAV, J.)