

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.304 OF 2015**

Sitaram Govind Kamble	]	
Age 60 yrs.	]	
R/o. Waghrat Boudhwadi	]	
Tal. Lanja, Dist. Ratnagiri	]	
At, Kolhapur Central Prison	]..	Appellant/accused
vs.		
The State of Maharashtra	]	
(At the instance of Lanja Police Station,	]	
Ratnagiri)	]..	Respondent

Ms. Payoshi Roy i/b Dr.Yug Mohit Chaudhary for the Appellant.
Ms.P.P. Shinde, APP for the Respondent -State.

**CORAM : SMT.SADHANA S. JADHAV &
N.R.BORKAR, JJ.**

**RESERVED ON : 23rd JUNE, 2021.
PRONOUNCED ON : 2nd SEPTEMBER, 2021.**

JUDGMENT : (PER : N.R.BORKAR, J)

1] This appeal takes an exception to the Judgment and order dated 17th November, 2014 passed by the learned Additional Sessions Judge, Ratnagiri in Sessions Case No.17 of 2013. By the impugned judgment and order, the appellant, who was accused before the trial court, has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short the "IPC") and sentenced to suffer Rigorous Imprisonment for Life and to pay fine of Rs.5000/- and in default of payment of fine to suffer Simple Imprisonment for six months. The appellant has been further convicted for the offence punishable under section 324 of the IPC and sentenced to suffer Rigorous

Imprisonment for three years and to pay fine of Rs.5000/- and in default of payment of fine to suffer Simple Imprisonment for six months.

2] The deceased Shantaram Y. Kamble was residing with his family at Village Waghroat, Tal. Lanja, Dist. Ratnagiri. The accused was residing in neighbourhood of the deceased. The incident took place on 1st February 2013. According to the prosecution, on the date of incident at about 12.30 p.m., the deceased came to the house of accused as he was abusing him.

3] It is alleged that the altercation took place between the accused and the deceased. The accused took out a sickle from loft of his house and rushed towards the deceased to assault him. At that time, the wife of accused came there and she tried to remove the sickle from the hands of accused. It is alleged that the accused gave a blow of sickle on the right hand of his wife. It is alleged that the accused thereafter rushed towards the deceased and assaulted him on his chest and back. The deceased was injured and died before he could be taken to the hospital.

4] On the basis of report lodged by PW-1 Tanvi A. Kamble with Lanja Police Station, the said police station registered the crime against the appellant/accused vide C.R. No. 5 of 2013 for the offences punishable under Sections 302, 324 and 504 of the IPC. On completion of investigation, charge-sheet was filed against the appellant/accused for the said offences.

5] The appellant/accused was charged and tried for the abovesaid offences. As stated earlier, the trial Court convicted the appellant/accused for the offences punishable under Sections 302 and 324 of the IPC.

6] We have heard the learned counsel for the appellant/ accused and the learned APP for the respondent/State.

7] The learned counsel for the appellant has submitted that the evidence on record will show that the deceased came to the house of accused to question him as according to him he was abusing him. It is submitted that altercation took place between the accused and the deceased and in the said altercation, the accused assaulted the deceased. It is submitted that under these facts and circumstances, the trial court was not justified in convicting the appellant/accused for the offences punishable under Section 302 of the IPC. It is submitted that considering the facts and circumstances of the case the benefit of exception 4 to Section 300 of the IPC needs to be granted to the accused.

8] It is further submitted that the trial court was also not justified in convicting the appellant/accused for the offence punishable under Section 324 of the IPC on the basis of uncorroborated version of PW-1. It is submitted that there is no reference of alleged assault by the accused on his wife in the evidence of PW-4 who has been examined as eye-witness and on the contrary she has admitted in cross-examination that she had not seen the wife of the accused at the place of incident. It is submitted that the trial court was, therefore, not justified in convicting the accused for the offence punishable under section 324 of the IPC.

9] In support of her submissions, the learned counsel for the appellant/accused has relied upon the following Judgments :

- i]* **AIR 2002 SC 1168 – Sukhbir Singh vs. State of Haryana;**
- ii]* **AIR 2002 SC 1175- Govt. of Haryana vs. Haryana Brewery Ltd. And anr. ;**
- iii]* **AIR 1992 SC 754 – V. Sreedharan vs. State of Kerala; &**
- iv)* **(1989) 2 SCC 217 - Surinder Kumar vs. Union Territory, Chandigarh.**

10] On the other hand, the learned APP for the State has supported the impugned judgment and order and submits that considering the evidence on record, the trial court was justified in convicting the appellant/accused for the offence punishable under Sections 302 and 324 of the IPC.

11] According to PW-1 Tanvi Kamble, the daughter-in-law of the deceased, on 1st February 2013, at about 12.30 p.m., the deceased went to the house of accused as he was abusing him. According to her, the accused took out the sickle from the loft of his house and rushed towards the deceased. The wife of the accused came there and she asked him to throw the sickle. The accused assaulted his wife by sickle on her hand. She has stated that the accused, then rushed towards the deceased and assaulted him by sickle on his chest and back.

12] According to PW-4 Priyanka Kamble, on 1st February 2013, at about 12.30 p.m., the deceased came to the house of accused as he was abusing him. Thereupon altercation took place between them. The accused rushed towards the deceased and assaulted him by sickle on his back and chest.

13] Considering the submissions, the only question is whether the requirements of exception 4 to Section 300 of the IPC are satisfied in the present case ?

14] In the case of *Surinder Kumar (supra)*, the Hon'ble Supreme Court has held :

"7. To invoke exception 4 to Section 300 of the Indian Penal Code four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger.

Of course, the offender must not have taken any undue advantage or acted in a cruel manner.”

15] It is apparent from the evidence of PW-4 who appears to be independent witness that the deceased came to the house of accused and thereafter altercation took place between the deceased and the accused. The fact that the deceased came to the house of accused would show that incident was not premeditated. The fact that the altercation took place between the deceased and the accused would show that the accused had assaulted the deceased in a sudden fight and in a heat of passion.

16] According to P.M. Notes, the following injuries were found on the person of the deceased:

- 1) Stab wound which measures approximately 4 x 2.5x 8 cm. on left chest wall in 4th inter costal space in mid clavicular line oblique in direction (above downwards).
- 2) C.L.W. 2x 1x 0.5 cm over lower lip
- 3) Lacerated wound 3 x 0.8 x 0.5 cm over right deltoid region, oblique in direction above downwards.
- 4) Lacerated wound 3.5 x 0.8 x 0.5 cm on left scapular region of back, oblique in direction, above downwards.

17] PW-10 Dr. Vikrant Chikhle, who conducted the postmortem on the dead body of deceased has admitted that the injury over forehead above left eye was simple injury and said injury is not possible by article No.1 sickle. Considering the overall facts and circumstances, it cannot be said that the accused has acted in a cruel manner. Even otherwise, the Hon'ble Supreme Court in the above judgment has held that the number of wounds caused during the occurrence is not a decisive factor.

18] In view of above, we are of the view that the requirements of Exception 4 to Section 300 of the IPC in the present case are satisfied. The appellant, therefore, deserves to be convicted for the offence

punishable under Section 304(I) of the IPC instead of Section 302 of the IPC.

19] As regards the conviction of the appellant/accused under section 324 of the IPC, there is no convincing evidence on record to that effect. PW-4 has not stated in her evidence that the accused assaulted to his wife. On the contrary, she has admitted in her cross-examination that she has not seen the wife of the accused at the place of incident. In such circumstances, the trial court was not justified in convicting the appellant/accused for the offence punishable under section 324 of the IPC on the basis of uncorroborated evidence of PW-1. In the result, the following order is passed.

ORDER

- i] Appeal is partly allowed.
- ii] The conviction of the appellant/accused for offence punishable under Sections 302 and 324 of the IPC vide impugned judgment and order dated 17th November, 2014 is quashed and set aside.
- iii] The conviction of the appellant is altered to an offence punishable under Section 304(I) of the IPC and he is sentenced to undergo Rigorous Imprisonment for ten (10) years and to pay fine of Rs.5000/-, in default of payment of fine to suffer Simple Imprisonment for six months.
- iv] The accused is acquitted of the offence punishable under Section 324 of the IPC.
- v] The appellant/accused is in Jail. Set off be granted to the appellant/accused for the period of detention undergone by him till date.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]