

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

CRIMINAL APPEAL NO. 786 OF 2019

**SNEHA
NITIN
CHAVAN**

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Dilip Mithya Jadhav
R/at Wada, Bhansalpada,
Tal. Wada, Dist. Palghar,
presently R/at on the brick-kiln
of Chandan Bhiwa Chaudhari,
Paliwali, Tal. Bhiwandi,
Dist. Thane

..Appellant

V/s.

The State of Maharashtra
Through Bhiwandi Taluka Police
Station, Dist. Thane

..Respondent

Mr. Ratnesh Dube for the Appellant.

Mrs. P.P. Shinde, APP for the Respondent/State.

**CORAM : NITIN JAMDAR AND
C.V. BHADANG, JJ.**

DATE : 31 AUGUST 2021

JUDGMENT (Per C.V. Bhadang J)

. The challenge in this Appeal is to the Judgment and Order dated 12 July 2017 passed by the learned Sessions Judge at Thane in Sessions Case No. 434 of 2014. By the impugned Judgment, the Appellant/Accused has been convicted for the offence punishable under Section 302 of IPC for having intentionally caused the death of Ananta Sawar. The Appellant has been

sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for one month.

2. The prosecution case may be briefly stated thus:

The complainant Shankar Gavit (Pw-3) was working on the brick-kiln of Chandan Bhiwa Chaudhari (PW-2) at village Paliwali, Taluka Bhiwandi, District Thane. Mandabai Sawar, who is the material aunt of Shankar Gavit and her husband now deceased Ananta Sawar were also working at the brick-kiln along with Appellant/Accused. All these persons who were working on the brick-kiln were residing in separate huts situated near the brick-kiln. According to the informant, the Appellant was in the habit of committing theft of the grocery articles purchased by the workers working on the brick-kiln which was informed to the employer Chandan Chaudhari.

3. On 1 May 2014, the informant and others after the day long work on the brick-kiln, had been to the weekly market and bought household and grocery articles. After having dinner in the night, the complainant Shankar Gavit along with the deceased Ananta Sawar were trying to persuade the Appellant, asking him to desist from committing theft. It appears that the said attempt by the complainant and the deceased did not go well with the Appellant who got annoyed and assaulted the deceased Ananta Sawar on his head by a crowbar lying there. As a result of

the assault, Ananta Sawar sustained bleeding injuries and succumbed to the same on the spot.

4. On the basis of a complaint lodged by Shankar Gavit with Bhiwandi Taluka Police Station at about 1.25 a.m. on 2 May 2014 an offence came to be registered and upon investigation a chargesheet was filed against the Appellant.

5. The learned Sessions Judge framed charge against the Appellant for the offence punishable under Section 302 and 504 of IPC. The Appellant pleaded not guilty to the charge and claimed to be tried. The defence of the Appellant is one of total denial and false implication.

6. At the trial, the prosecution examined in all seven witnesses and produced the record of the investigation. The Appellant did not lead any evidence in defence.

7. The learned Sessions Judge by the impugned Judgment has found the Appellant guilty of the offence punishable under Section 302 of IPC for which he has been sentenced as aforesaid. The Appellant came to be acquitted of the charge under Section 504 of IPC.

8. We have heard the learned counsel for the Appellant and the learned APP. With the assistance of the learned counsel for the parties, we have gone through the record.

9. Although the learned counsel for the Appellant has assailed the conviction of the Appellant, it was alternatively submitted that this is a case where the conviction is required to be altered to one under Section 304 Part II of IPC. It is submitted that the prosecution evidence does not show that there was any premeditation and the incident has happened on the spur of moment and in the heat of passion. The learned counsel pointed out that in all probability the Appellant was annoyed and was enraged by the fact that the complaint and the deceased had expressed that the Appellant was in the habit of committing theft and were trying to persuade him in the matter. It is submitted that this is a case of a single blow and the case would be covered by Exception 4 to Section 300 of IPC. It is submitted that the Appellant is in custody since 3 May 2014 and has undergone more than 7 years of imprisonment.

10. On behalf of the Appellant reliance is placed on the following decisions of the Supreme Court:

*(i) Sita Ram V/s. State (NCT of Delhi)*¹

*(ii) Rambir V/s. State of NCT, Delhi*²

¹ (2019) 7 Supreme Court Cases 531

² AIR 2019 SUPREME COURT 2264

*(iii) Govind Singh v/s. State of Chhatisgarh*³

*(iv) Hansaram v/s. State of Chhatisgarh*⁴

*(v) Kunhayippu v/s. State of Kerala*⁵

*(vi) Sarup Singh v/s. State of Haryana represented by the Home Secretary*⁶

*(vii) Suba Singh v/s. State of Punjab*⁷

11. The learned APP has supported the impugned Judgment. The learned APP, however in all fairness submitted that the Court may consider the evidence in the context of the alternate submission made on behalf of the Appellant.

12. We have carefully considered the circumstances and the submissions made. PW-6 Dr. Avinath Dhanawade, Medical Officer at I.G.M. Hospital Bhiwandi who conducted the postmortem examination on the dead body of Ananta Sawar. PW-6 had found CLW over occipital region, midregion 4 inches x ½ inch brain deep, fracture of occipital skull bone 3 x ½ inches . The Medical Officer has opined that the injuries can be caused by a hard and blunt and heavy object. The probable cause of death is cardio respiratory failure due to hemorrhagic shock due to injury to brain. The crowbar which was seized during the course of investigation was shown to PW-6 and he has opined that the

3 AIR 2019 SUPREME COURT 2120

4 AIR 2018 SUPREME COURT 3117

5 (2000) 10 Supreme Court Cases 307

6 (2009) 16 Supreme Court Cases 479

7 (1982) 3 Supreme Court Cases 226

injury found on the person of the deceased is possible by the said article. The Medical Officer has accordingly, issued postmortem report (Exh. 31) and an advance certificate of cause of death (Exh. 32). From the evidence of the Medical Officer, there is no manner of dispute that Ananta Sawar met with a homicidal death. The question is whether the Appellant is the author of the injuries found on the person of Ananta Sawar and if yes, what is the nature of the offence committed by the Appellant.

13. The prosecution has examined PW-3 Shankar Gavit who is the informant and the eyewitness to the incident. He states that on the day of incident, the deceased was trying to convince and persuade the Appellant to desist from committing theft. PW-3 states that there was a scuffle only between the Appellant and the deceased in which the Appellant fell down. Thereafter, the Appellant got up and assaulted the deceased with the crowbar on his head on account of which the deceased sustained bleeding injury on his head. The incident was informed to the employer PW-2 Chandan Chaudhari who came on the spot by which time Ananta Sawar was dead. PW-2 Chandan Chaudhari has stated about the earlier complaint by PW-3 Shankar Gavit and the deceased about the Appellant being in the habit of committing theft. PW-2 also states that he made an attempt to persuade the Appellant not to commit theft. It can thus be seen that the fact that PW-3 and the deceased were complaining that the Appellant

was in the habit of committing theft has sufficiently been established on record. The complainant and the deceased were suspecting that the Appellant was in the habit of committing theft. It has also come on record that on the date of incident, the complainant and the deceased were trying to persuade the Appellant not to commit theft whereupon the Appellant got annoyed and enraged and assaulted the deceased on the head by a crowbar.

14. The prosecution case as to the assault by the Appellant on the deceased is concerned is sufficiently established as nothing significant has been elicited in the cross-examination of the prosecution witnesses, particularly PW-3 who is the eyewitness to the incident, so as to discard their evidence. The spot panchanama (Exh. 12) also shows the presence of the blood stains on the spot. The next question is what is the nature of the offence which can be said to be proved against the Appellant. The evidence shows that incident in the present case happened on the spur of the moment as the Appellant was accosted by the deceased as the deceased was trying to persuade the Appellant to desist from committing theft by which the Appellant appears to have got enraged leading to the assault. The evidence also shows that there was a scuffle between the deceased and the Appellant in which the Appellant fell down. The Appellant got up, picked the crowbar lying there and assaulted the deceased on his head.

There is a single blow in this case. The arrest panchnama also shows that the Appellant had sustained injuries in the scuffle. There are no circumstances to show that the Appellant has taken any undue advantage or and has acted cruel manner.

15. In *Sita Ram* (supra) before the Supreme Court the deceased along with his wife was proceeding back to their home and on the way, asked Accused No.1 not to tap/hook the electricity from the electric pole, whereupon the accused Girdharilal got enraged and with the help of co-accused, assaulted the deceased Mangal Singh. The Supreme Court in paragraph 10 of the judgment found that following ingredients are required to be established to attract Exception 4 of Section 300 of IPC, (i) the crime must be committed without premeditation, (ii) it must be committed in a sudden fight in the heat of passion upon a sudden quarrel, (iii) the offender should not have taken undue advantage, (iv) and the offender should not have acted in a cruel or unusual manner. The Supreme Court in the circumstances held that the conviction was liable to be altered to Section 304 Part II of IPC.

16. Even in *Rambir* (supra), the accused had allegedly killed his wife by strangulating her by a *saria* (iron rod). The eyewitness who was the son of the deceased had stated that the incident took place when the deceased had taken money from the wallet of the Appellant/Accused whereupon the Appellant/Accused picked up

a *saria* on the spur of moment and compressed the neck of the deceased. The Supreme Court found that the *saria* was not brought by the accused, nor the assault was pre-planned. The Supreme Court therefore, found that the case was covered by Exception 4 to Section 300 of IPC and the conviction was modified to Section 304 Part II of IPC.

17. Considering the over all circumstances and the fact that there was no premeditation, the incident happened on the spur of the moment and heat of passion (as in all probability the Appellant was annoyed by the allegation by the deceased that the Appellant was committing theft) and there is a single blow by the Appellant on the deceased and the evidence also shows that there was a scuffle in which the Appellant had sustained injuries, we find that the conviction deserves to be modified to one under Section 304 Part II of IPC.

18. Section 304 Part II invites maximum sentence of imprisonment which may extend to 10 years or with fine or with both. As noticed earlier, the Appellant is in custody since 03 May 2014 and has served more than 7 years and 4 months of the imprisonment.

19. In the result, the following order is passed:

ORDER

- (i) The Appeal is partly allowed.
- (ii) The conviction of the Appellant is modified to one under Section 304 part II of IPC.
- (iii) The Appellant is sentenced to suffer rigorous imprisonment for the period already undergone.
- (iv) The Appellant be set at liberty forthwith, if not required in connection with any other offence.
- (v) Fine, if paid be refunded.
- (v) The part of the impugned judgment relating to the disposal of the Muddemal property, is hereby maintained.

(C.V. BHADANG, J.)

(NITIN JAMDAR, J.)