

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

**CRIMINAL APPEAL NO.889 OF 2013**

Panu Navshya Bhonar

Age 33 years,

R/o Wangarje, Charipada,

Taluka Dahanu, District Thane

.. Appellant

v/s.

The State of Maharashtra

Through Kasa Police Station

District Thane

.. Respondent

....

Mr. Shivprasad C. Kanojia for the Appellant.

Mrs. M. M. Deshmukh, APP for the Respondent.

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**CORAM: NITIN JAMDAR &  
G. A. SANAP, JJ.**

**DATE : 13 SEPTEMBER 2021.**

**JUDGMENT (Per Nitin Jamdar, J)**

The Appellant has challenged the judgment and order dated 4 October 2012 passed by the Additional Sessions Judge, Palghar in Sessions Case No.60 of 2010, whereby the Appellant-Accused No.1 is convicted for the offence punishable under Section 302 of the Indian Penal Code. The Appellant is sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- in default simple imprisonment for six months.

2. The prosecution case briefly is as follows. The Appellant Accused No. 1 and the deceased Chandar Parhad were residents of village Wagarje Chari Pada, Taluka Dahanu. Dilip Parhad, the informant, resides in the village with his family. Dilip Parhad, his two uncles-Rupaji and Chandar and the Appellant-Accused Nos.1 and No.2 reside in the neighbourhood. They belong to tribal community. On 7 May 2010, there was a feast at the brick kiln of the Appellant, and many persons had gathered. At around midnight, Chandar was abusing his sister for not attending the funeral of his mother. The Appellant came there and asked Chandar as to why he was abusing his sister. There was a scuffle between them, and deceased Chandar gave a slap to the Appellant. The Appellant threatened him, and then deceased Chandar and his wife went to their house. Thereafter Appellant No.1 and his brother Janya Accused No.2, came in front of Chandar's house and started abusing. Chandar came out of his house. The Appellant-Accused No.1 abused Chandar, Accused No.2 caught hold of Chandar, and Appellant No.1 pierced a weapon in the stomach of Chandar. Chandar expired due to the injury. After receiving the complaint, C.R. No.33 of 2010 under Section 302 read with Section 34 of the Indian Penal Code was registered at Kasa Police Station. Thereafter the case was committed to the Court of Sessions. Charges were framed to which the Accused pleaded not guilty. The prosecution has examined seven witnesses. The Appellant did not examine any witnesses.

3. The learned Sessions Judge, by the impugned judgment, found the Appellant guilty of the offence under Section 302 of the Indian Penal Code. Accused No.2 was acquitted.

4. We have heard Mr. Shivprasad C. Kanojia, the learned Counsel for the Appellant and Mrs M. M. Deshmukh, the learned APP, and we have gone through the record.

5. The learned Counsel for the Appellant submitted that no independent witnesses have been examined. There is a delay in lodging the complaint. He submitted that none of the witnesses had seen the weapon. He submitted that the PW-1-Dilip Parhad, Complainant is now occupying the house of the deceased which lends credence to the defence version that the fight was between the complainant and the deceased, and the Appellant is falsely implicated. The learned Counsel for the Appellant in the alternative submitted that as per the evidence of the prosecution just before the incident, the deceased had slapped the Appellant. The Appellant and Chandar were intoxicated, and a scuffle took place at the time of the incident, and a bamboo stick was used in a sudden quarrel with no intention or knowledge to commit murder of Chandar. The learned Counsel submitted that this case falls under Exception 4 of Section 300 of the Indian Penal Code. The learned Counsel submitted that the Appellant is in custody since 9 May 2010, for almost ten years and three months. The learned Counsel for the Appellant submitted that this is a fit case where conviction

needs to be altered to one under Section 304 Part II of the Indian Penal Code.

6. The learned APP supported the impugned judgment. The learned APP submitted that the Court may consider the alternate submission of the learned Counsel for the Appellant regarding the offence falling under Exception 4 of Section 300 of the Indian Penal Code and the punishment under Section 304 Part II of the Indian Penal Code, as per the evidence on record.

7. We have considered the rival contentions . PW-6- Mahesh Mane, the Medical Officer working at Kasa, conducted the post mortem. He found two injuries. One stab wound over right side abdomen just below thoracic cage 3 cm x 3 cm and 11 cm in depth and small abrasion over back suprascapular region 1 cm x 3 cm. There was a tear on the right hypochondriac region on the abdominal wall and a tear on the right hypochondriac region on the peritoneum; stab wound over left lobe liver 6 cm in depth and 2 cm in width. The Doctor opined that the injury was due to haemorrhagic shock due to the stab injury to the liver. Bamboo stick (Article 1) seized during the investigation was shown to PW-6-Mane, PW-6-Mane opined that the injuries found on the deceased person are possible by the use of Article 1. From the evidence of PW-6-Mane, it is clear that the death of Chandar was homicidal.

8. The prosecution has examined three witnesses viz., PW-1-Dilip Rupaji Parhad, the informant, PW-2-Sunil Parhad, the neighbour of Accused and deceased and PW-5-Jamani Parhad, wife of deceased Chandar. As regards the factum of assault by the Appellant on deceased Chandar, the evidence of PW-1-Dilip, PW-2-Sunil, and PW-5-Jamani is consistent and corroborates each other. PW-1-Dilip deposed that the Appellant came near the house of Chandar and the Appellant stabbed Chandar by a weapon. PW-1-Dilip is the eye witness. PW-2-Sunil also deposed that when PW-5-Jamani shouted he went there and saw the Appellant stabbing Chandar by bamboo stick. PW-5-Jamani, the wife of deceased deposed that the Appellant asked deceased Chandar to come out and when Chandar came outside, the Appellant stabbed Chandar with a weapon. This evidence cannot be discarded. The bamboo stick (Article 1) is recovered under Memorandum Panchanama Exhibit 24 and 24-A. The bamboo stick was found with human blood with group "AB", which is the blood group of the deceased.

9. The prosecution case that Accused No.2 caught hold of Chandar, and then the Appellant assaulted the deceased with a bamboo stick in his stomach has not been believed by the learned Sessions Judge as regard the role of the Accused No.2 and Accused No.2 has been acquitted. Thus the case is now that the Appellant pierced the bamboo stick in the abdomen and has damaged the vital part of

Chandar that is the liver.

10. Next question would be what will be the offence that will be considered proved against the Appellant. In the case of *Sita Ram V/ s. State (NCT of Delhi)*<sup>1</sup> the Apex Court laid down ingredients required to attract Exception 4 of Section 300 of the Indian Penal Code that is (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. In the case of *Rambir v/s. State of NCT, Delhi*<sup>2</sup>, the accused had killed his wife by strangulating her by using an iron rod. The Apex Court, after having found that the iron rod was not brought by the accused, the assault was not pre-planned, and an iron rod was used at the spur of the moment and conviction was modified to Section 304 Part II of the Indian Penal Code.

11. There is a single stab by the bamboo stick in the stomach of the deceased. PW-1-Dilip narrated that Chandar was abusing his sister and when the Appellant asked Chandar about it; Chandar slapped the Appellant. PW-2-Sunil stated that 15-20 brick kiln workers were present and had consumed alcohol. Thereafter the incident has taken place immediately. PW-1-Dilip and PW-2-Sunil both stated that the house of the Accused and the deceased was nearby. He deposed that

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<sup>1</sup> (2019) 7 Supreme Court Cases 531

<sup>2</sup> AIR 2019 SUPREME COURT 2264

PW-1-Dilip had consumed alcohol. Chandar was also abusing under the influence of alcohol. PW-1-Dilip deposed that the Appellant and Accused No.2 had consumed alcohol. They deposed that the incident of the deceased slapping the Appellant occurred when PW-1-Dilip and twenty persons were attending the feast. This incident happened at 12 midnight. It was around 12.30 a.m. that PW-1-Dilip heard the abuses. The Appellant and deceased were intoxicated. Even the witnesses were intoxicated. The deceased had slapped the Appellant in the quarrel, and when the Appellant confronted the deceased regarding the same, the incident had occurred. Both the Appellant and the deceased reside near each other. PW-5-Jamani deposed that the incident took place outside the house of Chandar. She admitted that the house of Appellant is hundred feet from their home. None of the witnesses have deposed that the Appellant had arrived at the spot armed with the bamboo stick. PW-5-Jamani admitted that bamboo stick- Article 1 is used for fences. PW-2-Sunil has deposed that such sticks were available in the compound. The learned Sessions Judge has referred to the history of tribal communities using weapons made out of bamboo, however, has not referred to the evidence on record that such bamboo sticks are used for fences. In the cross-examination, it is suggested that in a scuffle, the deceased got pushed and the bamboo stick pierced in his stomach. None of the witnesses have deposed to any previous enmity except the slapping incident just before the assault.

12. Considering these factors in totality and that there was a quarrel where the Appellant, the deceased and even the witness PW-1-Dilip, were intoxicated after a feast; that the deceased had slapped the Appellant and passion were inflamed and thereafter quarrel took place, and the Appellant, whose house was near the deceased confronted the deceased; that there is no evidence that the Appellant had carried the bamboo stick which was available nearby and used for fences and that there was a single blow, and that there was no previous enmity, we are of the opinion that conviction deserves to be modified to one under Section 304 Part II of the Indian Penal Code.

13. Section 304 Part II of the Indian Penal Code provides for a maximum sentence of imprisonment for ten years or with fine or with both. The Appellant is in custody since 9 May 2010 and has already served imprisonment of ten years and three months.

14. As a result, the following order:

**ORDER**

- (i) The Appeal is partly allowed.
- (ii) The conviction of the Appellant is modified to one under Section 304 Part II of the Indian Penal Code.
- (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.

(vi) The part of the impugned judgment relating to the disposal of the Muddemal property is hereby maintained.

(G. A. SANAP, J.)

(NITIN JAMDAR, J.)

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