

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 36/2020

Parasram Kisan Dakhore,
Aged 45 years, R/o. Pokhari,
Mahagaon, Tal. Mahagaon,
Dist. Yavatmal.

.... **APPELLANT**
(In Jail)

// VERSUS //

State of Maharashtra,
through Police Station Officer,
Police Station Mahagaon,
Tal. Mahagaon & Dist. Yavatmal.

.... **RESPONDENT**

Shri Shyam Jaiswal, Advocate for appellant (appointed)
Shri A. Kadukar, APP for respondent/State.

CORAM : VINAY JOSHI, J.
DATED : 03.09.2021

JUDGMENT

Heard.

2. The challenge in this appeal is to the judgment and order of conviction dated 01.06.2019 in Sessions Trial No. 45/2015 by the Additional Sessions Judge, Pusad, District Yavatmal. The appellant/accused was held guilty for the offence punishable under Sections 304-II and Section 324 of the Indian Penal Code. The Trial

Court has sentenced him to suffer rigorous imprisonment for 8 years along with fine of Rs. 1500/- for the offence punishable under Section 304-II of the Indian Penal Code, whilst imprisonment for 2 years along with fine of Rs. 1000/- for the offence punishable under Section 324 of the Indian Penal Code. Both sentences were directed to run concurrently. The accused was in Jail from the date of arrest i.e. 13.04.2015 till the date of conviction and thereafter.

3. It is the prosecution case that on 09.04.2015, informant – Vinod was at his house along with his family members. The accused was informant's real uncle. The accused came to the house of informant and picked up quarrel at the instance of allotment of one acre land to him. The informant's father Narayan asked accused to go away, on which he left. Within short time, accused brought iron rod from his house and dealt a blow at the chest of deceased Narayan. Informant intervened, on which accused also dealt a blow at his head by means of iron rod. Neighboring resident Yadao arrived on the spot and snatched iron rod from the accused. Soon after the occurrence, by arranging vehicle injured Narayan was being taken to the Hospital, however, he died midway. On the following day, informant (son of deceased) lodged report about the occurrence.

4. On completion of investigation, charge-sheet has been filed. In order to establish the guilt of accused, prosecution has examined in all eight witnesses. Though the accused was charged for murder, however the Trial Court held that the act of accused constitutes the offence of culpable homicide not amounting to murder punishable under Section 304-II of the Indian Penal Code. As regards to head injury caused to the informant, offence punishable under Section 324 of the Indian Penal Code was held to be proved. The State has not challenged the acquittal of accused from Section 302 of the Indian Penal Code.

5. Heard Shri Shyam Jaiswal, learned Advocate for the appellant/accused and Shri A. Kadukar, learned Additional Public Prosecutor (APP) for the respondent/State.

6. The prosecution case is based on the evidence of PW-1 Vinod who is informant and injured in the incident. Likewise, prosecution has relied on the evidence of PW-2 Jijabai who is wife of deceased and eye witness. Next reliance is placed on the evidence of PW-3 Yadav who is neighbouring resident and witness to the incident. With assistance of both sides, I have gone through the evidence led by prosecution. The evidence of these three witnesses was carefully

examined. PW-1 Vinod has stated on material aspect that the accused returned to his house with iron rod and dealt a blow at the chest of his father and at his head also. Even PW-2 Jijabai was consistent with the evidence of PW-1 on the point of assault. PW-3 Yadav equally deposed about the assault and snatching of iron rod from the accused. Nothing emerges from their cross-examination so as to discard their testimony. Lame attempt was made to claim a case of false implication, however, it was denied by the witnesses.

7. The prosecution has examined PW-7 Dr. Datta Jude who has conducted autopsy on the dead body. It has come in his evidence that deceased sustained fracture of 4th, 5th, 6th rib on midclavicular line. He has opined caused of death as due to injury on chest, due to hemorrhagic shock and bleeding in right thoracic cavity which is due to hemorrhagic shock. Doctor stated that the injury was possible by hard and blunt object. Particularly he stated that iron rod which was shown to him can possibly cause said injury. The Medical Officer has specifically ruled out the defence theory about sustaining injury by fall of big stone from the roof.

8. Notably, the defence has not challenged the finding recorded by the Trial Court that it was homicidal death. However, the

prosecution has duly proved the homicidal death by leading medical evidence. The evidence of eye-witnesses is consistent, cogent and reliable. There was no reason for false implication of accused. Learned defence counsel would submit that the prosecution has not examined any independent witness. Always, it depends upon the facts and circumstances of the case. The incident occurred in the late evening at the house of deceased therefore, naturally there is no possibility of viewing occurrence by stranger. Besides, son and wife of deceased neighbouring witness has been examined. The presence of these witnesses on the spot is quite natural. Mere relationship would not *ipso facto* affect the credibility of the witness. PW-1 Vinod also sustained head injury in the occurrence. Cogent and consistent evidence of these witnesses can be safely relied.

9. Learned defence counsel has placed reliance on decisions in cases of – (1) **Gaffar Khan S/o Rashid Khan Vs. State of Maharashtra, 2017 ALL MR (Cri) 3501**, (2) **J. Karthi @ Karthikayan Vs. the State by the Inspector of Police, 2019(2) MLJ (Criminal) 185** and (3) **Prakash Vs. Sate of Karnataka, 2014(2) Crimes 207**. On that basis, the learned counsel would submit that the prosecution has failed to examine independent witness, seized weapon was not sent for finger print

examination, as well as seizure of weapon is doubtful. It is suffice to say that this is a case based on direct evidence of three consistent reliable eye-witnesses. Their evidence remained unshattered during cross-examination. Therefore, being distinct facts, the defence cannot muster any strength from the above cited decisions.

10. Though the defence has criticized on the point of delay in lodging First Information Report (FIR), however prosecution gave plausible explanation for the delay. The incident took place on 09.04.2015 at 08.00 p.m. Soon after the occurrence, injured was taken towards hospital but died in the way, hence brought back. Informant-son despite death of his father, lodged report on the following day in the afternoon, therefore, time taken by him to lodge report is quite natural. The Trial Court after considering entire material concluded that the accused dealt a single blow by rod at chest of deceased which attracts the offence punishable under Section 304-II of the Indian Penal Code. The reasons are legal, weighty, and convincing. On re-assessment of entire material, I fully concur with the view of the learned Trial Court holding accused guilty for the offence punishable under Sections 304-II and 324 of the Indian Penal Code.

11. Coming to the point of sentence, the offence punishable Section 304-II of the Indian Penal Code attracts punishment of imprisonment which may extend upto 10 years. Legislature has left judicial discretion with the Courts to impose any term of sentence upto 10 years. No minimum rider has been fixed by the Statute. Always sentence should be in proportion to the atrocity committed by accused. It reveals from the record that accused was agricultural labour. The incident was outcome of altercation between two brothers. No deadly weapon was used. The accused gave single blow by iron rod which was proved to be fatal. The accused is real brother of deceased.

12. The record indicates that accused is in Jail from the date of arrest i.e. from 13.04.2015 till date, meaning thereby, he has served sentence of near about six years and five months. Having regard to all these facts, the said period of incarceration is sufficient. In view of that, appeal deserves to be partly allowed to the extent of modifying sentence to that extent, by maintaining the fine as imposed by the Trial Court.

13. Appeal stands partly allowed to the extent of sentence. Conviction under Sections 304-II and 324 of the Indian Penal Code is

maintained. Accused is sentenced for imprisonment for the period which he has already undergone along with fine as imposed by the Trial Court. The accused be set at liberty forthwith if fine is paid and if not required in other offence. If fine is not paid, he be released after undergoing default sentence.

14. Appeal stand disposed of in above terms.

15. Fees of appointed counsel for the appellant, be paid as per Rules.

JUDGE

Gohane.