

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

CRIMINAL APPEAL NO.482 OF 2016

1. Vitthal @ Baburao s/o. Taterao Kadam,
Age : 62 years, Occ. Agri.,
r/o. Akoli, Tq. Basamath Nagar,
Dist. Hingoli
 2. Taterao s/o. Vitthalrao Kadam,
Age : 26 years, Occ. Agri.,
r/o. Akoli, Tq. Basmath Nagar,
Dist. Hingoli,
 3. Sow.Rukhminibai w/o. Vitthalrao Kadam,
age : 57 years, Occ. Household,
r/o. Akoli, Tq. Basmath Nagar,
Dist.Hingoli
- ..Appellants

Vs.

The State of Maharashtra,
Through Police Station, Basmath Nagar,
Tq. Basmath Nagar, Dist. Hingoli

..Respondents

Mr.S.P.Katneshwarkar, Advocate for appellants
Mr.P.G.Borade, APP for respondent

**CORAM : R.G.AVACHAT AND
R.M.JOSHI, JJ.
DATE : DECEMBER 13, 2022**

JUDGMENT :-

This is an appeal from conviction. The appellants were convicted for the offence punishable under Section 302 read with

Section 34 of Indian Penal Code (I.P.C.) and therefore, sentenced to suffer life imprisonment and to pay fine of Rs.1,000/- each, with the default stipulation, vide order dated 27.07.2016 passed by learned Addl. Sessions Judge, Basmath, Dist. Hingoli, in S.T. No.23 of 2014.

2. Appellant no.1 – Vitthal, appellant no.2 – Taterao and appellant no.3 – Rukhminibai are herein after referred to as ‘A1’, ‘A2’ and ‘A3’, respectively.

3. Dattarao (deceased) was brother of A1 – Vitthal. A2 – Taterao and A3 – Rukhminibai are son and wife of A1 – Vitthal, respectively. The deceased – Dattarao and A1 – Vitthal had ancestral agricultural land. A partition thereof took place long back. There was, however, dispute between the two over 17 Gunthas of agricultural land.

4. It so happened that on 10.06.2014, PW 1 – Ganesh (informant) along with his parents went to their agricultural field. He is son of the deceased – Dattarao. They were engaged in agricultural operations. The appellants were laying pipeline for drip irrigation. The deceased asked the appellants to lay the pipeline

only in their own land. He did not allow the appellants to lay the pipeline in his own land. The appellants, therefore, started abusing him. A2 – Taterao lifted the deceased and then fell him on the ground. Then, A1 – Vitthal sat on the chest of the deceased. He picked up a nearby stone and gave a number of blows on his hand. A2 - Taterao strangled the deceased with handkerchief, while A3 – Rukhminibai squeezed the testicles of the deceased. When the informant Ganesh intervened, A2 – Taterao bit him. The informant then realised his father to have died on the spot. He, therefore, immediately lodged the FIR (Exh.24) with Police Station, Basmath.

5. A crime, vide Crime No.86 of 2014, came to be registered. On investigation thereof, the appellants came to be proceeded against by filing charge sheet. The case came to be committed to the Court of Session. Learned Addl. Sessions Judge, Basmath (trial Court), framed Charge (Exh.5). The prosecution examined sixteen witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence before it, convicted the appellants and sentenced, as stated above.

6. Heard learned counsel for the parties.

7. Mr.S.P.Katneshwarkar, learned counsel for the appellants, would submit that there was a long standing dispute over the agricultural land. A quarrel between the deceased and A1 – Vitthal preceded the incident. There was even scuffle between the two for long. None of the appellants were armed with any weapon. It was the deceased, who initiated the quarrel. The appellants did not have intention to kill him. Even, A2 – Taterao was assaulted by the deceased. He suffered injuries in the incident. According to learned counsel, at the most, it would be an offence under Section 304 of I.P.C. A3 – Rukhminibai did not play any role in the offence. The deceased was suffering from testicle related ailment. He had swollen testicles. Learned counsel, ultimately, urged for allowing the appeal in the first instance, and in the alternative, submitted for release of the appellants with the sentence of imprisonment already undergone by them, holding it to be an offence punishable under Section 304 of I.P.C.

8. Learned APP would, on the other hand, submit that the appellants admitted their presence at the scene of the offence. The nature of injuries suffered by the deceased indicate the appellants to have had intended to eliminate him. All the appellants have played

major role in the offence in question. They, therefore, cannot escape from the liability of the offence under Section 302 of I.P.C. read with Section 34 of I.P.C. He, therefore, urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record.

10. The independent eye witnesses to the incident did not stand by the prosecution. The post mortem report (Exh.43) suggests that the deceased died due to neurogenic shock due to head injury. The deceased had suffered twelve external injuries including enlarged swollen testicles. All the injuries were ante mortem. The deceased met with homicidal death, is undisputed.

11. A1 – Vitthal and the deceased were real brothers. They had ancestral agricultural land. Partition thereof had taken place long back. The lands of both of them adjoined each other. The informant – Ganesh (PW 1) is son of the deceased. He was, admittedly, present along with his parents on their field. They were engaged in agricultural operations. The appellants too were busy in

laying drip irrigation pipeline in their agricultural land. The deceased asked the appellants not to lay pipes in his land. According to the informant, A1 – Vitthal started abusing the deceased in filthy language. A2 – Taterao picked up the deceased and fell him on the land. A1 – Vitthal then sat on his chest and thrashed him with stone. A3 – Rukhminibai squeezed the testicles of the deceased. When the informant intervened, A2 – Taterao took bite of his left waist and shoulder.

12. During cross-examination of the informant, it has come on record that their 10 R land was on the eastern side, while 17 R land of the appellants was on the western. There was dispute between the appellants on one hand and the deceased and his family, on the other, over 10 R and 17 R lands. It was a long standing dispute. The deceased wanted to have 10 R land transferred in his name. A document of partition was executed between the deceased and A1 – Vitthal before notary. The elder son of A1 – Vitthal died due to electric shock. Transfer of land in the name of the deceased, therefore, could not take place. When the deceased along with his wife and the informant reached their field, the appellants had already been engaged in laying drip irrigation

pipes in their land. When they reached their land, the appellants did not abuse them. The appellants were there in the field since 11.00 in the morning. It was the deceased, who went in the land of the appellants. The deceased asked A1 – Vitthal to immediately transfer 10 R land in his name. The informant denied the deceased to have had started removing the pipelines laid in 17 R land. He admitted that a scuffle took place between the deceased and A2 – Taterao over removal of the pipes. A2 – Taterao removed his shoe and assaulted the deceased with it. The scuffle lasted for ten minutes. In the scuffle, the deceased suffered head injury besides injuries to his ribs and throat. A1 – Vitthal participated in the quarrel after ten minutes of the scuffle between the deceased and A2 – Taterao.

13. Appreciation of the aforesaid evidence would, undoubtedly, lead to conclude that there was long standing dispute over 17 R of agricultural land. The appellants were laying drip irrigation pipelines in their land since 11:00 in the morning. The deceased along with his wife and son (informant) reached the field by 03.00 p.m. The deceased went to the appellants and asked them not to lay pipeline in their field. Even, he started removing the pipelines. A quarrel, therefore, ensued between the deceased and

A1 – Vitthal. There was scuffle between the deceased and A2 – Taterao for about ten minutes. None of the appellants was armed with any sharp weapon. A1 – Vitthal took up a stone lying nearby and hit the head of the deceased with it.

14. As such, the incident took place without premeditation, in a sudden fight, in the heat of passion and upon a sudden quarrel. It would, therefore, be an offence punishable under Section 304, Part I of I.P.C.

15. A1 – Vitthal and A2 – Taterao have been in jail for over eight years and six months. Execution of substantive sentence of imprisonment of A3 – Rukhminibai has been suspended by this Court vide order dated 09.02.2017. She was on bail during trial. She was, thus, behind the bars for a total period of about one year.

16. In the case of **Dalip Singh and ors. Vs. The State of Punjab, AIR 1953 SC 364**, it has been observed thus:-

“40. In cases where the facts are more fully known and it is possible to determine who inflicted blows which were fatal and who took a lesser part, it is a sound exercise of judicial discretion to discriminate in the matter of punishment. It is an equally sound exercise of

judicial discretion to refrain from sentencing all to death when it is evident that some would not have been if the facts had been more fully known and it had been possible to determine, for example, who hit on the head or who only on a thumb or an ankle; and when there are no means of determining who dealt the fatal blow, a judicial mind can legitimately decide to award the lesser penalty in all the cases. We make it plain that a Judge is not bound to do so, for he has as much right to exercise his discretion one way as the other.....”

16. In view of the above, we are inclined to allow the appeal.

Hence, the following order:-

1. Criminal Appeal is partly allowed.
2. The sentence recorded by learned Additional Sessions Judge, Basmath in his judgment and order dated 27th July, 2016 in Sessions Trial No. 23 of 2014 is altered from Section 302 of IPC, 1860 to Section 304(I) of the IPC, 1860.
3. The appellants are held guilty for the offence punishable under Section 304(I) of IPC, 1860 and sentenced to suffer imprisonment already undergone. The order of the learned Additional Sessions Judge in respect of fine is confirmed.

4. Appellant Nos. 1 and 2 are in jail, they be set free forthwith, if not required in any other offence.
5. Appellant No. 3 is already on bail. Her bail bond stands cancelled.

[R.M. JOSHI, J.]

[R.G. AVACHAT, J.]

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