

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

**CRIMINAL APPEAL NO. 604 OF 2021
WITH
INTERIM APPLICATION NO. 280 OF 2021**

Sunil Baban Pawar

.Appellant

Vs.

The State of Maharashtra & Anr.

.Respondents

Mr. Aniket U. Nikam a/w. Mr. Piyush Toshnival & Mr. Amit Icham
for the Applicant/ Appellant.
Mr. Y. M. Nakhwa, APP for the State.

**CORAM : SUNIL. B. SHUKRE AND
ABHAY S. WAGHWASE, JJ.**

DATE : 20 MARCH, 2023

JUDGMENT:- (PER- ABHAY S. WAGHWASE, J)

. The above captioned appeal arises out of judgment and order passed by Additional Sessions Judge Vaduj by which appellant stood convicted for offence punishable under Section 302 of IPC and sentenced to suffer life imprisonment and to pay fine of Rs.3,000/- in default to suffer s. i. for two months.

FACTS IN BREIF GIVING ARISE TO SESSION'S CASE:

2. Deceased Vitthal owned agricultural land in village Ambevadi. Accused was also having agricultural land adjoining

to the land of deceased. There was a common well for both of them to share water. An electric motor was installed for pumping out water. Water was taken in rotation and on that count, there used to be quarrel between accused and deceased. Accused Sunil used to prevent deceased from drawing water and also used to issue threats.

On 30.01.2016 on such counts, there was quarrel between them and since then accused was very much annoyed. On 02.02.2016, around 2.30 p.m. while deceased, his wife and PW-2 complainant were discussing about taking borewell, accused reached there and started abusing deceased, and threatening to see him, he went home and returned with knife and inflicted blow on the left upper side of chest of deceased-Vitthal. He was grievously injured and was taken to the hospital. While undergoing treatment, Vithal succumbed to the injury. PW-2 nephew of Vithal approached police station and lodged complaint exhibit 17, on the basis which crime was registered.

3. Investigation was entrusted to PW-8, who after completion of the same, charge-sheeted accused for offence under Section 302.

4. Ld. Add. Sessions Judge, Vaduj framed and explain charged to the accused and after recording his Oplea, undertook the trial. After appreciating oral and documentary evidence, adduced by prosecution, Ld. Trial Court reached to the conclusion that prosecution established the charge and thereby vide its judgment and order dated 21.06.2019, convicted accused.

Precisely, the above judgment and order is now taken exception to before us by filing instant appeal, by raising various grounds, spelt out in the appeal memo.

SUBMISSIONS

Appellant:-

5. While questioning the legality of impugned judgment, ld. Counsel for appellant would submit that learned trial court has failed to appreciate the evidence on record in its proper prospective. According to him it was not at all the case warranting conviction under Section 302 of IPC. He emphasized that quarrel had taken place all of a sudden. There was no motive or pre-mediation to commit the offence. He pointed out that there was a single blow that too on the shoulder part of the body consequently, it was not at all case of homicide. He would further

submit that, at the most case would attract Section 326 of IPC or at the most culpable homicide not amounting to murder. According to him, Ld. Trial court failed to appreciate the background in which alleged incident had taken place and has also not considered the medical evidence while concluding about guilt of accused for the charge of murder.

Lastly, he submitted that appellant is already behind bar since more than 7 years and when evidence does not suggest commission of offence of murder by any chance, he prays that appeal deserves to be allowed.

RESPONDENT-STATE:-

6. In answer to above submissions, Ld. APP would submit that prosecution had succeeded in bringing home the charge before the Ld. Trial Court. There was evidence of eye witnesses coupled with oral dying declaration. Complainant was also present at the time of incident, and his testimony has remained unshaken inspite of being subjected to lengthy cross. There is corroboration from very wife of deceased. Therefore, such evidence has been rightly appreciated and considered by trial Court. Medical expert has attributed death due to assault by knife. There is recovery of the same at the instance of the

accused. Therefore, with such quality of evidence, the only inference that can be drawn in the accused. He is the author of the fatal injury and hence he has been rightly held guilty and convicted. Consequently, he submits that no interference is called for and so he prays for dismissal of the appeal.

Evidence on record before trial court:-

7. Apart from documentary evidence, comprising of F.I.R., panchanamas, P.M. report, prosecution has adduced evidence of following witnesses:

PW-1- Panch to the spot panchanama; PW-2- Complainant, who lodged FIR exhibit 17; PW-3- Wife of deceased; PW-4- Daughter of deceased; PW-5- Atopsy doctor; PW-6- Panch 2 memorandum of disclosure and recovery of knife; PW-7- acquaintance of both accused and deceased; PW-8- I.O.; PW-9- treating doctor.

8. As we are exercising powers under Section 374 Code of Criminal Procedure, 1973, we have re-examined, reassessed and re-evaluated both oral and documentary evidence for getting satisfied about the merit of the appeal.

ANALYSIS AND CONCLUSION

9. Evidence of PW-2 and PW-3 i.e. nephew and wife of deceased, only appears to be of significance. On examining their evidence, PW-2 and PW-3 both seem to be very categorical about annoyance of accused Sunil, because of drawing of water by deceased. They both speak about quarrel taking place on such count. Regarding the occurrence, it has come in their testimonies, that at 2.30 p.m. while deceased-Vithal his wife PW-3 and he himself were discussing about borewell, at that time, accused reached there, hurled abuses and went home and after 5 to 10 minutes, he came back, again quarreled and took out a knife and after again abusing Vithal, he inflicted blow with the same on the shoulder part.

10. PW-9 seems to be the treating doctor and according to him, on examination of Vitthal, he came across injury admeasuring 5x1x1 cm. However, patient died on the same day. In his medical record, this witness has noted about incised wound on the anterior aspect of right shoulder. Therefore, injury is also established from above witness.

11. Autopsy doctor PW-5, on internal examination claims to have came across injury to right brachial artery. He has

further opined that injuries possible by hard and sharp object, and cause of death is due to hemorrhagic shock, due to stab injury. He answered that death of Vithal was homicide.

12. In the light of the above evidence, and the sequence of event, narrated by PW-2 and 3, it is seen that said episode is a fall out of quarrel. Taking into account such aspect and that the blow was not inflicted on the vital part, it is unsafe to hold that there was intention to commit murder or to cause such bodily injury as was likely to cause death. It is worth noting that even autopsy doctor has not opined about the injury to be sufficient in the ordinary course of nature to cause death. Consequently, in our opinion, taking into account, the entire background of the case, manner of assault, it cannot be said to be case of homicide.

13. True it is that there is use of weapon like knife, but there is single blow and it is on the right shoulder. Therefore, as there is use of dangerous weapon and as grievous injury has been caused, in our opinion, case attracts charge under Section 326 of IPC.

14. Resultantly, Ld. trial Court in our opinion has erred in holding that offence of Section 302 is attracted. Hence,

interference at the hands of this Court is called for as regards to guilt for 302 of IPC is concerned and the order to that extent is required to be quashed and set aside and so required to be modified, which is as under :-

ORDER

- i) The appeal is partly allowed;
- ii) The appellant is convicted for the offence punishable under Section 326 of the Indian Penal Code and is sentenced to suffer imprisonment for a period for which he has already suffered his detention in jail which is continuously from 3rd February, 2016 till date and is further sentenced to pay fine of Rs.3,000/- in default, to suffer imprisonment for a further period of two months;
- iii) The impugned judgment and order are modified as indicted hereinabove and for rest of their parts, they are confirmed.

15. The Interim Application is disposed of in the above terms.

(ABHAY S. WAGHWASE, J.)

(SUNIL. B. SHUKRE, J.)