

Anand

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

CRIMINAL APPEAL NO. 505 OF 1999

Smt. Tolan Babu Shaikh .Appellant
Aged about 45 years,
Occ : House holder,
residing at Tekadi Bunglow,
Near Water Tank, Naupada,
Thane

Vs.

The State of Maharashtra .Respondent

Ms Ameeta Kuttikrishnan, Appointed Advocate, for the
Appellant
Mr. A. R. Kapadnis, APP, for the Respondent – State
Mr. Anand Nikam, P. I., Naupada Police Station, Thane present

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

DATE : 08 MARCH 2023

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

. Heard.

2. Rule.

3. Rule is made returnable forthwith. With the consent
of the parties, the Appeal is taken up for final disposal at the
stage of admission.

4. The Appellant has been convicted for the offences punishable under Sections 302 & 201 of the Indian Penal Code in connection with C. R. No. 267 of 1998 by the learned District & Sessions Judge, Thane on the charge that on 17.05.1998 at about 6.00 p. m. at her residential house i. e. in Tekadi Bunglow, behind water tank, Naupada, Thane, the Appellant, by using iron mortar (khal) gave blow to the head of her husband - Babu Shaikh thereby causing fatal injuries to him.

5. We have gone through the evidence of the material witnesses and the impugned Judgment and Order.

6. Insofar as the prosecution witnesses are concerned, we find that there are two eye witnesses i. e. PW.2 - Parvati Shankar Chavan and PW.3 - Asha Bhimsing Pardeshi, both of whom have stated that the Appellant and her husband used to quarrel frequently and that this quarrel used to take place most of the times when the deceased husband used to remain in the state of intoxication. PW.3 - Asha Pardeshi has gone to the extent of saying that the deceased - Babu Shaikh, in his state of intoxication, even used to loose his control and lie down on the

ground.

7. The prosecution evidence shows that at the time of incident, just before the Appellant hit her husband by means of iron mortar, there was an intense quarrel between the Appellant and her husband. It appears to us that the Appellant due to such quarrel lost her power of control. In fact, PW.3 - Asha Pardeshi has deposed that due to habit of the deceased to pick up frequent quarrels with his wife i. e. the Appellant, the Appellant was fed up. It is, therefore, not surprising to us that in such state of affairs, even a normal human being would loose his self control and would be provoked to indulge in unpleasant and even in violent act. This seems to have happened in the present case. The Appellant, in a spur of moment, picked up iron mortar and simply hit it on the head of her husband and thereby seriously injured him which injuries ultimately caused his death. This is, thus, a case of homicidal death at the hands of the Appellant. But, the question is - whether it is a murder or a homicidal death not amounting to murder ?

8. Insofar as the aspect of the Appellant hitting iron mortar to the head of her husband is concerned, the learned

counsel for the Appellant would not pray for returning a finding of innocence of the Appellant. However, she insists upon this Court coming to the conclusion that this is a case of culpable homicide which is not murder relying upon the provisions made in Exception 1 to Section 300. She also submits that as the degree of knowledge attributable to the Appellant is not in the realm of any mere certainty and there being no intention on the part of the Appellant to cause death of her husband, the conviction of the Appellant under Section 302 may be modified into Section 304(II) of the Indian Penal Code.

9. Learned APP submits that this is a case, where Part I of Section 304 of the Indian Penal Code would be attracted.

10. We find that the learned APP is right in his submission. Considering the fact that there was previous quarrel between the deceased and Appellant, that the deceased was in the habit of frequently quarreling with the Appellant in the state of intoxication, and that the Appellant was fed up with the deceased, the provocation as contemplated in Exception 1 to Section 300 of the Indian Penal Code could be said to be nurtured by the Appellant. This provocation, it is seen, deprived the

Appellant of power of self control and therefore, the offence committed by the Appellant is not of murder under Section 302 of the Indian Penal Code but of culpable homicide punishable under Section 304 – Part I of the Indian Penal Code.

11. In our opinion, this case would not fall within the ambit of Part II of Section 304 of the Indian Penal Code which speaks about something done with the knowledge that it is likely to cause death but which has been done without any intention to cause death or such bodily injury as is likely to cause death. In other words, Part II of Section 304 of the Indian Penal Code assumes absence of intention and requires presence of such knowledge as can give an idea to the offender that if he did a particular act it may bring about death of that person though he is not sure about the same. But, in case of the punishment prescribed under Part I of Section 304, the requirement is of intention of the offender. It postulates doing of an act with the intention of causing death or causing such bodily injury as is likely to cause death.

12. In the present case, the fact that a heavy object like iron mortar has been used for seriously injuring the deceased

would itself indicate that the Appellant had the intention to cause such bodily injury as was likely to cause death. When a person uses a heavy object like iron mortar for hitting another person on his head, the intention to cause bodily injury which is likely to result in death is implicit.

13. In view of the above, we find that act of causing death of the deceased committed by the Appellant is not murder but culpable homicide not amounting to murder and it is covered by Part I of Section 304 of the Indian Penal Code. The aspect which we have discussed above has not been properly considered by the learned Sessions Court, Thane. Now, these aspects having been considered by this Court and appropriate conclusion having been drawn by this Court, this Appeal deserves to be partly allowed. Hence, the order.

ORDER

- (i) The Appeal is partly allowed;
- (ii) The conviction of the Appellant for the offences punishable under Sections 302 & 201 of the Indian Penal Code is hereby modified;
- (iii) The Appellant is convicted for an offence of culpable homicide not amounting to murder punishable under Part I of Section 304 of the Indian Penal Code;
- (iv) The Appellant is sentenced to suffer R. I. for a period of seven years together with fine amount of Rs. 1,000/-;

(v) In default of payment of fine amount by the Appellant, the Appellant shall undergo S. I. for a further period of three months;

(vi) The impugned Judgment & Order are modified in the above terms;

(vii) The Appellant is directed to surrender herself before the Naupada Police Station, Thane within four weeks and the Naupada Police Station, Thane is directed to arrest the Appellant and send her to appropriate prison immediately after her surrender and arrest;

(viii) In case, the Appellant fails to surrender before the concerned police station, as directed by this Court, the Naupada Police Station shall cause the Appellant to be arrested and taken to the appropriate prison in terms of this order.

(ABHAY S. WAGHWASE, J.)

(SUNIL B. SHUKRE, J.)