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

CRIMINAL APPEAL NO. 76 OF 2020

Kalpana Marathe ... Appellant
Versus
Krushnarao @ Ram Krushna
Sidram Suryawanshi & Anr. ... Respondent

Mr. Swaraj S. Jadhav for the Appellant.
Mrs. M. M. Deshmukh, APP for the Respondent-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 24th JANUARY, 2023

P.C. :-

. This appeal is by PW1, wife of the deceased Vilas Y. Marathe, ex-service man, who allegedly was murdered by the respondent-accused, resulting in his conviction vide judgment and order dated 15th November, 2019 delivered in Sessions Case No. 49 of 2015, for an offence punishable under Section 304 Part II of the Indian Penal Code.

2. The learned counsel for the appellant while trying to make out a case under Section 372 of the Code of Criminal Procedure would urge that the charge against the respondent-accused was

framed for an offence punishable under Section 302 vide Exh.2. According to him, the evidence of PW1 i.e. present appellant, PW3 and PW4 in categorical terms implicates the respondent-accused for commission of offence punishable under Section 302. So as to substantiate this claim, he has invited the attention of this Court to the observations and the discussions in the judgment impugned, so as to re-appreciate and infer the charge of murder against the respondent, which is punishable under Section 302.

3. The learned APP would assist this Court and submits that the Court may pass an appropriate order in the matter.

4. With the assistance of both the counsel, we have perused the discussions and the evidence of PW1-Kalpana, the complainant PW3-Sachin Wakle, PW4-Hiraman Dukale, who are allegedly eye-witnesses to the incident.

5. It has come on record that there was enmity between the deceased and the accused on the issue of right of way for entering the field. Deceased Vilas on the date of the incident was on his way to supply milk to the dairy, when he stopped and questioned the respondent-accused as to why he is passing through the field of deceased along with his cattle, which has resulted into a scuffle. The aforesaid fact is rightly so inferred by the learned Sessions

Judge after having regard to the evidence of the aforesaid witnesses, particularly, in the backdrop of the earlier enmity. The evidence of PW1 in categorical terms speaks of she having witnessed deceased Vilas, questioning the accused about the aforesaid act and witnessed the quarrel between accused and the deceased in which the accused assaulted deceased by a stone.

6. Considering the nature of evidence on record, the Court below was justified in referring the Exception 4 of Section 300 of the Indian Penal Code and accordingly ordered conviction of the respondent-accused under Section 304 Part II of the Indian Penal Code.

7] Respondent-Accused has hit the deceased Vilas with stone on his forehead. There was no perpetration of crime on the the part of deceased. Before altercation started in between him and deceased Vilas, a stone lying by side was picked up by the Accused and hit Vilas on his forehead. Attack on the deceased by Applicant is outcome of the act of deceased questioning the Respondent-Accused of use of the boundaries of his field for the purpose of passing alogwith his cattle.

8] The nature of weapon used in the commission of crime viz stone which was picked up from the spot of the incident cannot be said to be sufficient enough to infer that Respondent-Accused had

an intention to commit offence of murder, particularly when it has come on record in testimony of P.W.1 Kalpana that she saw her deceased husband quarreling with the Respondent-Accused. Hence, it cannot be said that it was within the knowledge of Respondent-Accused that his act of hitting deceased Vilas on his forehead with stone is so imminently dangerous that in all probabilities same is going to cause death or such bodily injury which is likely to cause death.

9. We do not see any reason which warrants interference in the view expressed by the Sessions Court, as same is possible view in the light of the evidence on record. As such, no case for interference is made out. The Appeal as such is dismissed.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]