

Andreza

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

CRIMINAL APPEAL NO. 299 OF 2018

Kiran Raghunath Dalvi, Age ; 27 years,
Occ: business, residing at Narayanpur,
Tal. Purandar, Dist. Pune.
(At present in custody at Yerwada Jail)

... Appellant
(Orig. Accused)

V e r s u s

The State of Maharashtra,
(Through the Saswad Police Station, Pune).

... Respondent

Mr. Daulat G. Khamkar for Appellant.

Mrs. M. M. Deshmukh, A.P.P. for Respondent-State.

**CORAM: A. S. GADKARI AND
 PRAKASH D. NAIK, JJ.**

RESERVED ON : 18th April 2023

**PRONOUNCED ON : 13th October 2023
 (THROUGH V.C.)**

JUDGMENT (*Per Prakash D. Naik, J.*)

1. The Appellant is convicted for an offence under Section 302 of Indian Penal Code (IPC) and sentenced to suffer imprisonment for life and to pay fine of ₹ 25,000/-. He is acquitted for the offence under Section 498-A of IPC vide Judgment and Order dated 17.10.2014 passed by learned Additional Sessions Judge, Pune.
2. The case of the prosecution is as under :

The Complainant Devkibai Dinkar Gaikwad, is the mother of deceased Suvarna. Marriage of Suvarna was performed with accused no.1 in 2002. Suvarna went to reside with accused persons in a joint family at Narayanpur. Suvarna was blessed with two children out of the wedlock. The accused were engaged in the business of preparing garlands in the temple. Suvarna used to help them in the business. Accused no. 1 was addicted to liquor. He used to ill-treat his wife Suvarna by saying that she did not prepare garlands of flowers properly and she was not doing the household work properly. She was assaulted and abused. The accused used to assault her on the same count. Suvarna along with the children had been to the house of Complainant. At that time she told her mother that the accused are assaulting her and threatening to cause her death. They used to pick up quarrels and beat her on financial affairs. Suvarna returned back to her matrimonial home. She again came back to her mother and informed that the accused assaulted her and drove her out of the house. Suvarna stayed with her parents till 20.09.2008. Accused no.1 came to the house of Complainant on 21.09.2008 to take Suvarna and children back. He assured to give good treatment to Suvarna and took her back on 21.09.2008. On 11.10.2008, Complainant received message that accused assaulted Suvarna and she is serious. She has been admitted in hospital. The Complainant and her husband rushed to hospital. Suvarna had sustained bleeding injuries on her head. She was

unconscious. She was declared dead. First Information Report was lodged. The prosecution case is that the accused no.1 assaulted the deceased on her head by giving blow of iron rod and after the assault, he was caught by Pw.2-Bharat Kshirsagar and Pw.3-Vilas Khurgade. Police reached the spot. Panchanama was effected. Postmortem was conducted. Statements of witnesses were recorded. Clothes of the deceased and accused were seized under panchanama. Accused were chargesheeted.

3. Charge was framed under Section 302 of IPC and Section 498-A of IPC.

4. Vide Judgment and Order dated 17.10.2014, passed by learned Additional Sessions Judge, Pune, the accused no.1 is convicted for an offence under Section 302 of IPC. He was acquitted for the offence punishable under Section 498-A of IPC. Accused nos. 1 and 3 were acquitted of the offence punishable under Section 498-A and 302 read with Section 34 of IPC.

5. Prosecution examined eleven witnesses. Pw.1-Devkibai Gaikwad is the first informant. She is the mother of deceased. Pw.2-Bharat Kshirsagar reached the spot at the time of incident. Pw.3-Vilas Khurgade is the eye witness to the incident. Pw.4-Abhimanyu Borkar had witnessed the incident of assault. Pw.5-Dr. Ajay Taware, is the Medical Officer. Pw.6-Dr. Bhupendra Mohole conducted postmortem of deceased. Pw.7-PSI Rajendra Boravke, is the Investigating Officer.

Pw.8-Jaysing Patil, is the Investigating Officer, Pw.9-Nikhil Bhutkar, is panch witness. Pw.10-Dr. Suresh Dabadgaonkar, is the Chief Medical Officer at Noble Hospital, Pune and Pw.11-Ajit Jadhav, is panch witness for arrest panchanama. Dw.1-Dr. Sameer Shitole, examined Suvarna and declared her dead. Dw.2-Dr. Sahebrao Shinde, is the Medical Officer.

6. Learned Advocate Mr. Khamkar representing Appellant submitted that the prosecution case is weak. There is no evidence to establish the charge under Section 302 of IPC. The Appellant has been acquitted for the offence under Section 498-A of IPC. There are discrepancies in the evidence of witnesses. The co-accused were acquitted of all the charges. The ocular evidence and medical evidence is contradictory. The prosecution case rests principally on testimony of three witnesses namely, Pw.2, Pw.3 and Pw.4. Their evidence does not inspire confidence. There are number of contradictions. It would not be safe to rely on their testimony. The defence of the accused is that some unknown persons killed the deceased whilst committing dacoity. The trial Court has erroneously discarded the said defence. The discovery of iron rod is contrary to Section 27 of the Indian Evidence Act. The eye witnesses have not given material particulars of the incident. There is no motive to commit murder. The accused is entitled for benefit of doubt. The prosecution has failed to prove its case beyond reasonable doubt. The evidence of defence witnesses was

ignored. In the alternative it is submitted that the offence under Section 302 of IPC is not made out. At the most, the accused could be convicted under Section 304(ii) of IPC. The Appellant is in custody for a period of fourteen years. The sentence may be reduced and the Appellant may be released on the basis of sentence undergone by him.

7. Mr. Khamkar has relied upon the following decisions :

(i) **Ankush Shivaji Gaikwad vs. State of Maharashtra**¹

(ii) **Madanayya vs. State of Maharashtra**²

(iii) **Rampal Singh vs. State of U.P.**³

8. Learned Additional Public Prosecutor submitted that the prosecution has established the case beyond doubt. The evidence of the prosecution witnesses could not be shaken. There are eye witnesses to the incident. They have established that the Appellant had assaulted the deceased with iron rod. The evidence on record establishes that the accused had intention to commit murder. The prosecution witnesses inspire confidence. The medical evidence corroborated the version of the eye witnesses. The victim had sustained several injuries. The offence under Section 302 of IPC is proved. Considering the weapon used in the commission of crime, number of injuries suffered by the victim, nature of injuries suffered by the victim on the vital part of the body on which the injuries were suffered clearly proves that the accused no.1 has committed murder of the deceased. Acquittal of the co-

1 AIR 2013 SCC 2454

2 (2017) 13 SCC 485

3 2012 Cri.L.J. 3765

accused would not affect the prosecution case. The assault resulting in death was authored by the Appellant. All the ingredients to constitute the offence under Section 302 of IPC are made out. No interference is called for in the impugned Judgment. Appeal may be dismissed.

9. We have scrutinized the record. Perused the evidence of witnesses. The appellant and the co-accused Raghunath Bhiku Dalvi and Smt. Shantabai Raghunath Dalvi, were charged of offences under Section 498-A and Section 302 read with Section 34 of IPC. Accused nos. 2 and 3 are acquitted of all the charges. Whereas, the Appellant has been convicted for an offence under Section 302 of IPC and acquitted for the offence punishable under Section 498-A of IPC.

10. The First Information Report was lodged by Devkibai Gaikwad. She is the mother of deceased. She has been examined as Pw.1. She has deposed that Suvarna (deceased) was her daughter. She was married to accused (Appellant). Accused no.2 is father in law of Suvarna and accused no.3 was her mother in law. All the accused were residing jointly. The accused no. 1 was addicted to liquor. The accused and Suvarna were in the business of preparing garlands. Accused no.1 was assaulting Suvarna. He was insisting that Suvarna should bring ₹ 25,000/- to ₹ 50,000/- from her father. He used to quarrel with Suvarna on the count of transaction pertaining to the shop. Accused nos. 2 and 3 used to beat her regularly. Suvarna visited her parental home with children and disclosed that she was subject to physical

torture by the accused. On her return to matrimonial house, she would again face threat of dire consequences. She was sent back to her matrimonial home. She was again assaulted by the accused. The victim Suvarna was at her parental home thereafter for about one and half month. The accused no.1 came to take her back to matrimonial home. Accused no.1 assured that he would not ill-treat Suvarna. Immediately thereafter, the Complainant received a message that accused had assaulted Suvarna and she has been admitted to hospital. The Complainant and her husband went to the hospital. Some persons informed her that accused no.1 and his mother had assaulted Suvarna with iron bar on her head. She lodged the report.

11. In the cross examination, Pw.1 stated that the accused are financially sound. In the past complaints were lodged against the accused with police regarding ill-treatment to Suvarna. There is no reference to demand of ₹25,000/- in her report, Exhibit P-53. At the time of lodging report, she did not mention that she inquired with persons from Village Narayanpur regarding the incident and she came to know about it from the said persons.

12. Pw.2-Bharat Kshirsagar, acted as Panch for spot panchanama. He deposed that on 11.10.2008, he noticed that wife of accused no.1 was lying in pool of blood near the house. Vilas Khurgade had caught hold of accused no.1. Accused no.1 lifted one stone lying at the spot in order to assault his wife Suvarna on her head. He asked him to drop

the stone and, accordingly, he dropped it. He gave call to Police Station. Victim was sent to hospital. Police arrived at the spot. On the next day, police recorded his statement. Police recovered articles from spot.

13. In the cross examination, Pw.2 stated that the deceased was unconscious when he saw her. About two hundred people had gathered at the spot. Some persons were present near the accused. In the statement, he has stated that he told accused no.1 to drop the stone and accordingly he dropped it. On perusal of the statement, he cannot assign any reason as to why this fact is not mentioned in the statement.

14. From the evidence of this witness, it is apparent that he is not the eye witness to the assault. He saw the accused at the spot of incident. There is omission in his version that, he saw the accused holding stone which was dropped by him.

15. Pw.3-Vilas Khurgade, is the eye witness to the incident. According to him, on 11.10.2008, he heard the commotion in the Village. He went to the spot. He saw the accused assaulting his wife Suvarna by iron bar. He rushed to the spot. He caught accused no.1. The victim fell unconscious. She had suffered head injury. Pw.2 came to the spot.

16. In the cross examination, Pw.3 stated that there are residential houses near the house of accused. Persons who are in the temple cannot hear the noise or commotion if it takes place in front of the

house of the accused. He knows most of the villagers. He had caught the accused no.1. At that time, he was having iron bar. Accused no.1 did not leave the place till the police had arrived. His statement was recorded by the police on 12.10.2008. Iron bar has no specific identification marks.

17. The defence has not been able to discard evidence of Pw.3 being eye witness. His evidence that the victim was assaulted by accused no.1 cannot be disbelieved.

18. Pw.4-Abhimanyu Borkar, has deposed that on 11.10.2008, he had gone at the construction work of the house of one Gulabrao Gaikwad. He saw accused no.1 and his wife Suvarna quarreling. At that time, accused nos. 2 and 3 were present. Accused nos. 1 to 3 assaulted Suvarna. He did not pay any heed to it as such quarrels used to take place daily. He saw accused no.1 assaulting Suvarna with iron rod on her head. Sushilabai Dalvi tried to stop accused no.1 by holding iron rod. He slapped Sushilabai. The accused no. 1 continued assaulting Suvarna. Pw.2 and Pw.3 came to the spot. Pw.2 took the iron rod from accused no.1. The accused no.1 took stone lying aside. He was about to hit Suvarna, but Pw.2 prevented him from doing so. Call was given to the police. She was unconscious. She was taken to hospital. The witness was cross examined. He stated that he met the police for the first time in connection with this case on 13.10.2008. His statement was recorded.

19. Although the witness has been cross examined at length, the version of the witness about the incident being witnessed by him could not be demolished. This witness has referred to the quarrel between the accused and the victim, which used to occur usually. There is no assault by using stone. The evidence of this witness discloses that the incident had occurred suddenly during the quarrel between the parties. The evidence does not disclose from where the accused brought the iron rod or whether it was a pre-planned assault on the victim with iron rod.

20. Pw.5-Dr. Ajay Taware, has deposed that he was attached to BJ Medical College. Dr. Mohole was working as Assistant Lecturer. Postmortem of Suvarna Dalvi was conducted by Dr. Wable and Dr. Mohole. They had mentioned the injuries in paragraphs 17 and 19 of the postmortem report. They mentioned the cause of death due to blunt injury over the head. They opined that injuries are sufficient to cause death in ordinary course of nature individually and collectively. The injuries mentioned in column no. 17 and corresponding injuries mentioned in column no. 19 are sufficient to cause death in the ordinary course of nature. The said injuries are possible by iron bar.

21. Pw. 6-Dr. Bhupendra Dinkar Mohole has deposed that on examination he found external and internal injuries. They were sufficient to cause death in ordinary course of nature individually, collectively and associated with other injuries. In the cross

examination, he stated that he was not handed over any document from Noble Hospital when the dead body was referred to him for postmortem.

22. Pw.7-Rajendra Boravke, has stated that he was in charge of investigation on 12.10.2008. He visited the spot. He recorded panchanama of spot. The deceased had filed several applications in the past. It was against the accused that ill-treatment was caused to her on account of dowry.

23. In the cross examination, Pw.7 stated that he did not visit the spot on 11.10.2008. He did not make inquiry with witness Bharat Kshirsagar on 12.10.2008 when spot panchanama was drawn. He did not record statement of Bharat Kshirsagar on 12.10.2008. Pw.2 did not inform him while recording his statement that accused no.1 dropped the stone when he was instructed to do so. Pw.2 did not inform him that boys present there removed the injured to hospital and that few boys are present there. Pw.2 did not inform him that accused no.1 runs flower shop behind the temple and the deceased was assisting him in his shop. Pw.4 did not inform him that after assaulting Sushilabai, she fell down. He did not inform that when iron bar was taken from the hands of accused no.1, he took the stone lying aside. It did not transpire in his investigation that the accused was caught hold with iron bar in his hand. He did not visit Noble Hospital.

24. Pw.8-API-Jaysing Patil, deposed that he obtained complaint of Pw.1. It was registered under Sections 307, 323 and 498-A read with Section 34 of IPC. He went to Noble Hospital and effected panchanama of dead body of deceased. Offence under Section 302 of IPC was registered. Doctor intimated that deceased died due to head injury. He conducted investigation. He seized the weapon and clothes. Recorded statements of witnesses.

25. In the cross examination, Pw.8 stated that he had not collected medical paper of Noble Hospital of deceased before filing chargesheet. He denied that dying declaration of the deceased was recorded at Noble Hospital and it was not supporting the case. Weapon used in this case was found lying at the spot. Complainant had not stated in her statement that accused no.1 had demanded ₹25,000/- to ₹50,000/- with her.

26. Pw.9-Nikhil Ganesh Bhutkar, has stated that he was called by the police on 15.10.2008. The accused gave statement that he would produce the iron bar. Memorandum statement was recorded. The accused showed the iron rod kept in front of house. Police seized the iron bar.

In the cross examination he stated that one case is registered against him by Saswad Police Station. The case is going on before the Sessions Court.

27. Pw.10-Dr. Suresh Dabadgaonkar, stated that he was in charge of Medico Legal Register of Noble Hospital, Pune. He produced legal register of Noble Hospital. On 11.10.2008, Suvarna Dalvi was brought to the hospital. She was examined by the Doctor. She had eleven injuries on her person. While sending the dead body from the hospital for postmortem, their procedure is that they obtain thumb mark of the deceased person on the form which is sent to police with the dead body for postmortem. When the victim was examined by their hospital, she was already dead.

28. In the cross examination it is stated that when they are sending dead body to postmortem to police, they were keeping office copy with them. In answer to the question whether the injuries noted as punctured wound can occur by sharp edged weapon, he answered in affirmative and said that incised injuries cannot be occurred by hard and blunt object. By hard and blunt object, punctured wound cannot occur. Incised wound occurred by sharp and cutting object. In answer to another Court question that on going through the postmortem report and column no. 17, the injuries noted in the postmortem in column no. 17 and injuries noted by his Doctor in MLC register are same. The witness answered that as the patient is examined by the houseman, who is Junior Doctor, on clinical examination he found that the patient is dead and therefore he was not very particular about noting the detailed nature of injuries and as the case was a medico legal, it had to

be forwarded for postmortem through Police so he was not very particular about not noting down injuries therefore there was disparity between the postmortem noted injuries mentioned in column no. 17 of postmortem notes and the medico legal register of the hospital. It is generally a practice that if the case is brought dead, they do not go into the details of the injuries because in the case of scalp the skin is tensed on the bone so it is very difficult to differentiate an incised injury from lacerated injury even for experienced doctor and being a private hospital, they do not take brought dead cases and usually declared them dead and send them for postmortem.

29. In the cross examination, he stated that he knows Dr. Wable, who is in-charge of Forensic Medicine Department of Sassoon Hospital, Pune. He did not agree with the proposition that every Doctor who is noticing dead body should note the situation of dead body. It is true that if the patient is brought to Doctor in injured condition, it is first duty of the Doctor that he should save the life of the injured person. It is not true to say that firstly it is requirement to have diagnosis of disease of patient. It is necessary to save the life first. The line of treatment depends on the seriousness of the case in hand after examination of the patient. Houseman Doctor is trained Doctor who checks the patients in serious cases. It is true that the postmortem injuries noted in paragraph 17 are not in conformity with the observations of injuries noted by Houseman Doctor of their hospital.

When the Doctor gets an opportunity to see the injury at the earliest, his observation to that effect is always accurate as the healing process starts as the time passes. After preliminary examination, if the patient is found dead in a private institution, they do not go to the details of injuries and diagnosis when the case is medico legal case because it has to be sent to postmortem.

30. Pw.1-Ajit Jadhav, is the panch witness for arrest panchanama carried out and clothes of the accused were seized.

31. The defence examined Dr. Sameer Suresh Shitole, as DW.1. He stated that he is a BHMS Doctor. Injuries are of two types. One is lacerated wound, abrasions wound and contusions wound and second type is incised wound, punctured wound and stab wound. The first type of injuries pertaining to lacerated wound, abrasions and contusions, which are probable by blunt object and second type of injuries pertaining to incise wound, punctured wound, stab wound are probable by sharp object. He produced MLC register of Noble Hospital. On 11.10.2008, he was working as Houseman. He brought MLC register as per witness summons. Suvarna Dalvi was brought to the hospital on 11.10.2008. She was taken for primary treatment. He examined her and found that she was brought dead. He found eleven injuries. The injuries noted in the register brought by him at serial nos. 13 and 5 to 11, are probable by sharp object. Incised wounds are mostly

caused by sharp object. Their edges are clear cut. If the group injury come under laceration, edges are irregular.

32. In the cross examination by the APP, he stated that three months before joining Noble Hospital, he passed out BHMS degree. The work of autopsy is not included in their syllabus. He never did autopsy work at any time. He never did any operation and not taught about operation. During their studies, they did not have any opportunity to see operations, to do any operation, to see any injury and to do any stitches work. The topics are related to Human Behaviour and Medicine. There was no occasion for him to look and consider any injury. In 2008 he was having superficial knowledge about injury. The victim was brought in dead condition. As per his knowledge he noted the injury in MLC register. He was not having any knowledge about injury no. 1, 3 and 5 to 11. Injury noted in the postmortem are correct. The internal injuries are true and correct. The injuries noted in postmortem are ante-mortem. In re-examination he stated that Forensic Science was his study in the syllabus.

33. Dw.2, Dr. Sahebrao Shinde has deposed that he was serving at Noble Hospital, Pune. On 11.10.2008, he was at Casualty Department. After declaring the patient as dead, they intimated to police to visit the hospital and carry the body to Sassoon Hospital along with the dead body. They did not follow any other procedure while sending dead body. In the cross examination, it is stated that Exhibit 130 is the

xerox copy of office copy of the hospital. Original copy is sent to Sassoon Hospital, Pune and office copy is given to police.

34. On the scrutiny of the evidence of all the witnesses including the defence witnesses, it is apparent that role of assault by iron rod has been attributed to the Appellant. It is pertinent to note that all the accused including the Appellant were acquitted for offence under Section 498-A of IPC. The witnesses have deposed that the Appellant was seen assaulting the deceased. The evidence of witnesses discloses that there used to be quarrels between the accused and the victim. The version of the Complainant that there was demand of money by the accused was proved to be an omission. The incident of assault had occurred in the quarrel that had ensued between the victim and the accused. Accused nos. 2 and 3 are acquitted for the offence under Section 302 of IPC as well as Section 498-A of IPC. The prosecution has adduced the evidence of witnesses which is consistent in proving that the Appellant was involved in assaulting the deceased. The witnesses are not clear as to the number of blows. The accused had examined defence witnesses. The accused had tried to contend that there is discrepancy in the postmortem report and the medical case papers of Noble Hospital where the victim was initially taken for treatment. The defence has argued that there is major disability in the number and nature of injuries reflected in the register produced by Noble Hospital and the postmortem report. The evidence of the

Doctors from Noble Hospital and the cross examination of the defence witnesses from the Noble Hospital examined by the defence, it is apparent that the injuries noted by Noble Hospital were by Houseman who had no adequate experience and that the injuries reflected in the postmortem were correct. There is no reason to doubt the injuries reflected in the postmortem. The defence has not been in position to discard the injuries appearing in the postmortem. Thus, the overtact attributed to the Appellant that he has assaulted the victim, has been proved. The victim has died due to injuries suffered by her on assault by Appellant with iron rod.

35. Learned Counsel for the Appellant has submitted that the Appellant is in custody for a period of fourteen years. By way of alternate submission, it is submitted that assuming that it is proved that the victim died due to assault by Appellant, the offence would not fall under Section 302 of IPC. There was no intention on the part of the accused to commit murder of his wife. Hence, the conviction under Section 302 of IPC may be altered to Section 304(ii) and the Appellant may be released from custody on the basis of sentence undergone by him.

36. In the case of **Ankush Shivaji Gaikwad vs. State of Maharashtra** (supra), it was held that intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances viz. nature of the weapon used,

whether the weapon was carried by the accused or was picked up from the spot, whether the blow is aimed at a vital part of the body, the amount of force employed in causing injury, whether the act was in the course of sudden quarrel or sudden fight or free for all fight, whether the incident occurs by chance or whether there was any pre-meditation, whether there was any prior enmity or whether the deceased was a stranger, whether there was any grave and sudden provocation, and if so, the cause for such provocation, whether it was in the heat of passion, whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner and whether the accused dealt a single blow or several blows. The Court on the basis of factual aspect and the evidence on record, altered the conviction under Sections 302 and 304(ii) of IPC by observing that there was verbal altercation between the accused and the deceased, which culminated into scuffle in which the Appellant hit the deceased with iron rod which he was carrying and did not give any further blow after the deceased fell down.

37. In the case of **Madanayya vs. State of Maharashtra** (supra), it was held that on going through the postmortem report, it was observed that on going through the postmortem report, there is no doubt that there were a number of injuries on the body of the deceased. None of the injuries by itself were sufficient to cause death. The cumulative effect of the injuries is that the deceased died. The issue

arises is whether the accused had the intention of causing death of the deceased. The deceased narrated the incident to her sister and she survived till the evening although assault was in the morning. It is difficult to impute the intention to kill to the Appellant. The conviction was converted from Section 302 to Section 304(ii) of IPC.

38. In the case of **Rampal Singh vs. State of Uttar Pradesh** (supra), the Apex Court had dealt with the distinction between culpable homicide amounting to murder and not amounting to murder. In the said case, the dispute was between the deceased and the accused who were related to each other on certain construction made by the deceased on his land. There was heated exchange of words taking place between the accused and the deceased. The deceased was throwing the accused on the ground. Both separated by others present at spot. The accused brought a rifle from his house and warned his brother standing near the deceased to keep away as he was going to fire bullet. Subsequently, on provocation of deceased, accused fired a shot hitting the deceased in the stomach, which resulted in his death. It was held that though the offence was not committed with any premeditation and intention to kill, the same was committed with intent to cause bodily injuries which could result in death of the deceased. The accused had not fired indiscriminately but took a clear aim at the deceased and thus it was not a case of knowledge simpliciter but that of intention ex-facie

and altered the conviction of accused from Section 302 of IPC to Section 304(i) of IPC.

39. The evidence on record in the present case analysed herein above indicates that the incident had taken place during quarrel. The accused had assaulted his wife with iron rod. It is not clear from where the weapon was brought. The facts indicate that it was at the spot of incident. The accused continued to stay at the spot. He was then apprehended by the witnesses and till police arrived, he did not try to disappear from the spot. It is true that there are number of injuries on the person of the deceased reflected in the postmortem report. From the evidence on record and the nature of injuries, it can be seen that the accused had committed the act of assault with intent to cause her bodily injury, which could result in the death of the deceased. The case would therefore fall under Section 304(i) of IPC.

40. Section 304 of IPC is quoted herein below for the purpose of reference, which reads as follows :

“Section 304 -Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

41. Thus, though it is proved that the accused had assaulted the deceased with iron rod, which resulted in victim's death, it does not

appear from the factual matrix and the evidence on record that there was an intention to kill although the accused has committed the act with intent to cause bodily injury which could result in the death of the deceased. The Appellant has been in custody for a substantial period of time. Hence, from altering the offence from Section 302 to Section 304 (Part-I) of IPC, the accused can be released from custody on the basis of the sentence of imprisonment undergone by him.

ORDER

- (i) The Appeal is partly allowed;
- (ii) The Judgment and Order dated 17.10.2014 passed by learned Additional Sessions Judge, Pune, is modified by altering the conviction under Section 302 of IPC to Section 304(Part-I) of IPC and the Appellant is directed to be released from custody on the basis of the sentence of imprisonment undergone by him;
- (iii) Appeal stands disposed of.

(PRAKASH D.NAIK, J.)

(A.S.GADKARI, J.)

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