

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 333 OF 2021

Duru Soma Katlami,
(C-10641) Convicted Offender,
Aged about 34 years,
Occupation – Cultivator,
R/o Shirpurtola, Tahsil – Etapalli,
District – Gadchiroli.

.... **APPELLANT**

VERSUS

State of Maharashtra,
through P.S.O. Jarawandi, Tahsil -
Etapalli, District – Gadchiroli.

.... **RESPONDENT**

Mr. R.D. Hajare, Counsel (appointed) for the appellant,
Mr. M.K. Pathan, Addl.PP for the respondent/State.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.

DATE OF RESERVING THE JUDGMENT : 30th NOVEMBER, 2022
DATE OF PRONOUNCEMENT OF THE JUDGMENT : 28th APRIL, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Appellant-Duru Soma Katlami, who shall be hereinafter referred to the “accused”, is assailing the judgment dated 05-9-2020 rendered by the learned Additional Sessions Judge, Gadchiroli in Sessions Case 118/2018 whereby the accused is

convicted for offence punishable under Section 302 of the Indian Penal Code (IPC) and is sentenced to suffer imprisonment for life and to payment of fine of Rs.5,000/- (Rupees Five Thousand) and in default, to suffer further simple imprisonment for three months.

2. The case of the prosecution is that PW 1-Rakesh Dugga lodged report dated 12-6-2018 (Exhibit 12) alleging that he is residing at Shirpur Tola, Tahsil-Etapalli, District-Gadchiroli with his father and elder brother Shivaji (since deceased). PW 1-Rakesh Dugga had gone to his agricultural field on 10-6-2018 and returned at 9-00 p.m. He was informed by PW 6-Sarita Usendi, whom PW 1-Rakesh Dugga refers as his brother's keep, that at 6-00 p.m. the accused came to their house and questioned the deceased why he is not marrying Sarita. During the altercation, the accused assaulted Shivaji with stick. Sarita brought the injured Shivaji home. PW 1-Rakesh Dugga noticed that Shivaji was sleeping on the cot and the left portion of his head near the eye and the forehead was swollen. PW 1-Rakesh Dugga asked Shivaji as to what exactly happened and was told that the accused

assaulted Shivaji on the head after questioning him why he was not marrying Sarita. The next day PW 1-Rajesh Dugga took Shivaji to the Primary Health Centre at Jarawandi. The Medical Officer referred Shivaji to the Gadchiroli Hospital. PW 1-Rakesh Dugga engaged private vehicle and at 8-00 p.m. on 11-6-2018 left for the Gadchiroli Hospital. However, during the journey, Shivaji succumbed to injuries suffered. The body was brought home. It was raining heavily and the report was lodged on the next day.

3. On the basis of report (Exhibit 12), Jarawandi police registered Crime 01/2018 for offence punishable under Section 302 of the IPC and Assistant Police Inspector Vishal Jadhav conducted the investigation. The spot and inquest panchanama was conducted. The accused was arrested and the clothes on his person seized. The stick allegedly used in the offence was seized, the autopsy was conducted and post-mortem report obtained. The seized stick was referred to the Medical Officer and his opinion was obtained. Articles seized were referred to the Forensic Science Laboratory. Statements of witnesses were recorded and on completion of the investigation final report was

submitted in the Court of the jurisdictional Magistrate who committed the case to the Sessions Court.

4. The learned Sessions Judge framed charge vide Exhibit 7. The accused abjured guilt and claimed to be tried. The defence is of total denial and false implication.

5. The prosecution examined as many as twelve witnesses. PW 1-Rakesh Dugga is the brother of the deceased and the first informant. PW 2-Arun Kove and PW 3-Manohar Uikey are the panch witnesses to the spot panchanama. PW 4-Rakesh Yengantiwar is the panch to the seizure of the clothes and PW 5-Sushil Lohare is the panch to the seizure of the stick. PW 6-Sarita Usendi is the star witness who claims to have witnessed the altercation and the assault. PW 7-Vijay Kove is the Police Constable who took the dead body of the deceased for autopsy. PW 8-Pawan Raut is the Medical Officer. PW 9-Thakchand Bhasarkar is the Constable who took the stick to the Medical Officer for opinion. PW 10-Ganesh Andhe is the Police Constable who carried the seized articles to the Forensic Science Laboratory,

Nagpur. PW 11-Netji Kawale is the Police Constable who registered the crime and PW 12-Vitthal Jadhav is the Investigating Officer. The prosecution relied on the documentary material which is extracted by the learned Sessions Judge as follows.

Sr.No.	Particulars of the documents	Exhibit No.
1.	Complaint lodged by Rakesh Dasaru Dugga	12
2.	Fist Information Report	13
3.	Spot Panchanama	15
4.	Inquest Panchanama	17
5.	Seizure Memo in respect of the Clothes	19
6.	Memorandum Panchanama	21
7.	Wapsi Report	24
8.	Questionnaire sent to the Medical Officer	27
9.	Post-Mortem Examination Report	28
10.	Viscera Form	29
11.	Viscera Form No.2	30
12.	Form – B	31
13.	Letter of the Medical Officer to the I.O.	32
14.	Duty Pass issued to Head Constable Ganesh Andhe	35
15.	Acknowledgment of the Forensic Science Laboratory	36
16.	Duty Pass issued to Head Constable Ganesh Andhe	37
17.	Acknowledgment of the Forensic Science Laboratory	38
18.	Summons to Panchas – Manohar Uikey & Sobram Atla	41
19.	Crime Details Form	42
20.	Letter of the I.O. to the Circle Officer for drawing the Map	43

21. Map drawn by the Circle Officer	44
22. Letter of the I.O. to the Medical Officer for Post-Mortem	45
23. Receipt about handing over the dead body to the relatives	46
24. Arrest Form	47
25. Letter by I.O. to Civil Surgeon, for query of article stick.	48
26. Letter to Forensic Science Laboratory for analysis	49
27. Letter to Forensic Science Laboratory for analysis	50
28. Letter to Forensic Science Laboratory for analysis	51
29. Chemical Analyzer's Reports	52-53

6. The accused did not step into the witness box, nor did the accused examine defence witness.

7. The learned Additional Sessions Judge held that the charge is proved beyond reasonable doubt. The learned Additional Sessions Judge considered the autopsy report and held that in the absence of any material to suggest that the ante-mortem injuries suffered by the deceased were accidental, homicidal death is proved.

8. The learned Additional Sessions Judge then considered the

crucial issue whether the prosecution has proved that the injuries resulting in death are caused by the accused. The learned Additional Sessions Judge heavily relied on the testimony of PW 6-Sarita Usendi. The testimony of the first informant Rakesh Dugga is relied to the extent that although not an eyewitness to the incident, his deceased brother disclosed to him that the accused was the assailant. The learned Additional Sessions Judge then held that panch witness Arun Kove has proved the spot panchanama. The testimony of PW 4-Rakesh Yengantiwar on the point of seizure of the clothes of the deceased is accepted. The disclosure and recovery panchanama is held duly proved. The learned Additional Sessions Judge held that the sole injury which is visible on the person of the deceased, indicates that the accused inflicted the stick blow on the vital part of the deceased, i.e. head which in the natural course is sufficient to cause death. The learned Additional Sessions Judge further held that the accused did have the intention to cause death. The weapon of stick is held to be a lethal weapon considering the description which came on record. The learned Additional Sessions Judge observes that admittedly there was no sudden quarrel or fight and that there

was long standing prior enmity between the accused and the deceased. It is found that several blows are administered on the head of the deceased and that the circumstances collectively show that the intention was to cause death.

9. We have heard the learned appointed Counsel for the accused Mr. R.D. Hajare and the learned Additional Public Prosecutor for the State Mr. M.K. Pathan, and with their able assistance the record is perused.

10. The thrust of the submission canvassed by Mr. R.D. Hajare is that assuming that the incident occurred in the manner in which PW 6-Sarita Usendi has deposed, the offence which is made out, is punishable under Section 304 Part-II of the IPC. Mr. R.D. Hajare would argue that certain findings recorded and observations made by the learned Additional Sessions Judge are not consistent with the evidence on record. Illustratively, Mr. R.D. Hajare points out that there is no material to suggest that the stick which is the alleged weapon of offence was carried by the accused to the house of the deceased. It is further submitted that the

observation that “admittedly” no sudden quarrel or sudden fight preceding the assault, is equally erroneous. It is also submitted that the finding that the assault was premeditated is not supported by any material on record. Mr. R.D. Hajare would emphasize that the further finding that several blows are administered on the head of the deceased is vulnerable. In rebuttal, the learned Additional Public Prosecutor Mr. M.K. Pathan would submit that the learned Additional Sessions Judge has marshalled and appreciated the evidence on record correctly. The stick is a lethal weapon and the fact that the blow was directed at the head is sufficient to attract Section 302 of the IPC.

11. We find substance in the submission of Mr. R.D. Hajare that certain findings recorded by the learned Additional Sessions Judge are not borne out from record. We may first scrutinize the evidence of PW 6-Sarita Usendi who is the only eyewitness. She has deposed that when the deceased was sleeping on the cot, the accused, who is her neighbour, came to their house and started quarrelling with the deceased. The bone of contention was that the accused was questioning the deceased when would he marry

PW 6-Sarita Usendi and the deceased responded by stating that he would marry Sarita as per his convenience. PW 6-Sarita Usendi then deposes that the deceased and the accused went out of the house quarrelling with each other. It was in front of the gate of the house of the accused that the deceased was assaulted with stick on his forehead. Sarita Usendi has not deposed as to the number or nature of the blows dealt on the forehead. She has then deposed that Shivaji was brought to the house and taken to the Primary Health Centre at Jarawandi on the next day and then while he was shifted to the Hospital at Gadchiroli, he expired on the way.

12. We note that it is not even the version of the eyewitness Sarita Usendi that the accused came to her house armed with stick. It has come on record that sticks used as firewood were kept outside her house. PW 8-Dr. Pawan Raut, who conducted the autopsy, has deposed that he noticed the following external injuries on the body.

- (i) Obliquely placed contusion present over the scalp of head extending from left frontal region to the right

parietal eminence of size 14 cms. x 8 cm., reddish blue in colour. On incision extravasated blood and blood clots were present.

- (ii) Left periorbital contusion of size 5 cms. x 4 cms., reddish blue in colour.
- (iii) Right periorbital contusion of size 4 cms. x 3 cms., reddish blue in colour.

13. Internal examination revealed haematoma present all over the skull obliquely placed linear fracture corresponding to external injury (i) and obliquely placed left anterior cranial fossa fracture also corresponding to injury (i). PW 8-Dr. Pawan Raut has specifically opined that it is injury (i) which was sufficient in the ordinary course of nature to cause the death. The wooden stick allegedly used as a weapon of offence was examined by PW 8 who described the stick as 129 cm. in length with maximum circumference of 16 cm. The cross-examination is not very effective inasmuch as PW 8 is not questioned on the examination of the alleged weapon of offence.

14. We have no hesitation in upholding the finding recorded by the learned Additional Sessions Judge that it was accused who is instrumental for the death of Shivaji. However, we are not inclined to uphold the conviction under Section 302 of the IPC. We have already noted that certain findings of the learned Additional Sessions Judge are not consistent with the evidence on record. The incident appears to have occurred since the accused questioned the deceased as to why he was not marrying PW 6- Sarita Usendi. There is no evidence to show that the accused came to the house of the deceased and Sarita Usendi armed with stick. It appears to be during the midst of an altercation that the accused picked up a stick which was lying outside the house, and dealt the fatal blow. We are, therefore, inclined to hold that the accused can only be held guilty of culpable homicide. Having so observed, we are satisfied that the conviction must be under Section 304 Part-I of the IPC and not under Section 304 Part-II as is argued by Mr. R.D. Hajare. The fact that the vital organ was targeted by the wooden stick or log, and the force with which the blow was dealt, is sufficient in our view to infer intention to cause death, or to cause such bodily injury as is likely to result in death

in the natural course of events.

15. The upshot of the discussion is the appeal will have to be partly allowed.

16. We set aside the conviction of the accused under Section 302 of the IPC and instead convict the accused for offence punishable under Section 304 Part-I of the IPC and sentence him to suffer rigorous imprisonment for ten years. Sentence of fine is confirmed.

17. The fees of the learned Counsel appointed for the appellant be quantified and paid as per rules.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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