



**(This Judgment is corrected as per Court's order dated 09-10-2024
passed in Criminal Application No.4206 of 2024)**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 186 OF 2007

1. Maheboob Khan S/o. Shahnoor Khan
(Died), through L.Rs.

1-1) **Rafiya** Begum Wd/o. Maheboob Khan
Age: 40 years, Occu.: Household.

1-2) **Madiha Anam d/o. Maheboob Khan**
Age: 19 years, Occu.: Household,

1-3) **Shahed** Khan s/o. Maheboob Khan
Age: 17 years, Occu.: Education,
Minor u/g. Application no.1-1).

1-4) Ujama Kausar d/o. Maheboob Khan
Age : 14 years, Occu.: Education,
Minor u/g. Application no.1-1)
All R/o. Near Chandmari Masjid,
Nandanwan Colony, Aurangabad.
Tq. & Dist.Aurangabad.

..Appellants

Versus

. The State of Maharashtra
Through Police Inspector,
Police Station Begumpura,
Aurangabad.

..Respondent

....

Advocate for Appellants : Mr.M.K.Deshpande

APP for Respondent : Mrs.Ashlesha S.Deshmukh

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 20 SEPTEMBER, 2024

PRONOUNCED ON : 25 SEPTEMBER, 2024

JUDGMENT :-

1. In this appeal, there is challenge to the judgment and order of conviction dated 28-05-2007 rendered by learned Adhoc Additional Sessions Judge, Aurangabad in Sessions Case No.138 of 2006 returning guilt of appellant Maheboob Khan for offence under Section 304 Part II of the Indian Penal Code (IPC).

STORY OF PROSECUTION IN BRIEF

2. According to prosecution, this is a case of uxoricide i.e. killing one's own wife. On 10-02-2006, appellant Maheboob Khan (deceased) returned home drunk at around 10:45 p.m. Informant PW1 Yusuf Khan, son and his sister PW2 Miss Farah Naaz and mother were in the house. Appellant initially abused deceased wife. He laid his hands on wooden bat and struck it on the head of his wife, who fell unconscious. She was shifted to hospital. However, on 23-02-2006, she expired. Therefore, PW1 Yusuf Khan set law into motion, on the basis of which crime was registered, it was duly investigated and after gathering evidence, appellant Maheboob Khan came to be chargesheeted by PW9 Yusufoddling Qadri.

Learned Adhoc Additional Sessions Judge, Aurangabad on whose file Sessions Case No.138 of 2006 was assigned, tried accused

for offence under Section 302 of the IPC i.e. on the strength of evidence of nine witnesses examined by prosecution.

Vide judgment dated 28-05-2007, learned Judge reached to a finding that offence under Section 304 Part II of the IPC and not offence under Section 302 of the IPC is made out and accordingly, rendered above judgment of conviction.

Said judgment is now taken exception to by filing instant appeal.

3. At the outset, learned Counsel for the appellants pointed out that convict appellant Maheboob is no more and he has died. Death certificate to that extent is placed on record. He further submitted that though appeal stands abated, however, present appeal is prosecuted by legal heirs of Maheboob, who were added by virtue of order dated 12-09-2023. He emphasized that legal heirs are keen in prosecuting matter as they are challenging prosecution version and evidence on merits and they have right to get the blot of conviction removed. Equally, because of the conviction, they are deprived of service and pensionary benefits of Maheboob.

SUBMISSIONS

On behalf of appellants :

4. Pointing to the evidence on record, learned Counsel for the

appellants submitted that here very family members PW1 Yusuf Khan, who set law into motion, has denied the article allegedly recovered to be not the one which was allegedly put to use. Secondly, he submitted that both PW1 Yusuf Khan, and PW2 Miss Farah Naaz, very daughter of deceased appellant, have not supported prosecution. He further took this Court through evidence of PW6 Ramkrishna Govindrao Bhusale (Autopsy Doctor) and specifically invited attention of this Court to opinion given by Autopsy Doctor that death is due to “intracranial hemorrhage spontaneous origin i.e. natural cause” and therefore, he laid stress on prosecution version and charge of homicide. He also questions recovery of article. He also criticized judgment of trial Court for recording guilt of Section 304 Part II when according to him, there is nothing to show that death was only due to assault by appellant and not otherwise. At this juncture, he also submitted that alleged occurrence is of 10-02-2006 whereas death has taken place on 23-02-2006 i.e. almost after two weeks of the alleged occurrence. He also invited attention of the Court to the testimony of PW1 informant wherein he stated that after being initially taken to the hospital, she survived for two weeks and finally cause of death is also issued as “intracranial hemorrhage spontaneous origin i.e. natural cause and therefore, he objects to the

findings reached at by learned trial Court and prays to interfere by allowing the appeal.

In support of his submissions, learned Counsel for the appellants relied on the following rulings :

(i) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.2351 of 2011 in *Krishan v. State of Haryana*, dated 25-01-2024.

(ii) Judgment of the Hon'ble Supreme Court in Criminal Appeal No(s).985 of 2010 in *Babu Sahebagouda Rudragoudar and Others v. State of Karnataka*, 2024 SCC OnLine SC 561.

(iii) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.1439 of 2019 in *Boby ... v. State of Kerala*, 2023 SCC OnLine SC 50.

(iv) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.50 of 1957 in *Bhagwan Das and another v. State of Rajasthan*, AIR 1957 SC 589.

(v) Judgment of this Court in Criminal Appeal No.553 of 2008 in *Parshuram Alias Parshu Ganpat Nalwade v. State of Maharashtra*, dated 23-04-2015.

On behalf of State :

5. Strongly objecting to the above submissions, learned APP would submit that PW1 informant is an eye witness. That he has deposed whatever he saw. That he had seen his own father mounting

assault by hard object like bat on his mother. That blow was on vital part. She invited attention of the court to the post mortem report and noting in column nos. 17 and 19. That death is due to intracranial bleeding and it is only because of impact of blow. That appellant Maheboob was the author and therefore, she supports the findings and conclusion drawn by learned trial judge and prays to dismiss the appeal for want of merits.

In support of her submissions, learned APP relied on the following rulings :

- (i) *Anbazhagan v. The State Represented by the Inspector of Police, 2023 LiveLaw (SC) 550.*
- (ii) *Bhagwan Singh v. State of Uttarakhand, 2020 DGLS (SC) 320.*

EVIDENCE BEFORE TRIAL COURT

6. In support of its case, prosecution has adduced evidence of in all nine witnesses. Their role and status is as under :

PW1 Yusuf Khan in his evidence at exh.10 stated that in the night of 10-02-2006 at around 10.45 p.m., his father came home under influence of liquor, abused his mother and when he was about to hit her by bat, he himself intervened and he suffered the blow given by

his father. His mother was admitted after two days and she died on 23-02-2006.

PW2 Miss Farah Naaz, daughter of deceased stated that, that night her father arrived home under influence of liquor, he abused her mother and when he rushed to beat her, her brother intervened but the bat struck his brother on the head. Her mother fell unconscious and she went in Coma and later on expired due to health problem.

PW3 Mrs.Shahnoor Begum w/o Bismillah Khan, Pancha to inquest, did not support.

PW4 Syed Saeeduddin s/o Syed Hafizudding is Pancha to spot panchanama.

PW5 Sakharam s/o Eknath Sonawane is Police Head Constable, who registered MLC.

PW6 Dr.Ramkrishana s/o Govindrao Bhusale, Autopsy Doctor, who issued post mortem report and opined death due to “intracranial hemorrhage spontaneous origin i.e. natural cause”.

PW7 Shakeel Khan s/o Rashid Khan, second Pancha to inquest

identified the same to be at exh.28.

PW8 Sharifoddin s/o Mohd. Shukur, Panch to memorandum of disclosure and seizure did not support prosecution.

PW9 Yusufoddin s/o. Sardaruddin Qadri is Investigating Officer, who narrated all steps taken by him during investigation.

ANALYSIS

7. Here there was charge of Section 302 of the IPC, but learned trial Judge recorded guilt for offence under Section 304 Part II of the IPC.

8. **PW1** Yusuf Khan, son of appellant, in evidence at exh.10 stated that on 10-02-2006 at around 10:45 p.m., his father arrived in drunken condition, abused his mother, rushed over her, took a bat to beat her. He intervened and at that time bat struck his own head. Thereafter, he found his deceased mother become unconscious. Thereafter, he took her inside the house, made her lie down and asked whether she was to be shifted to the hospital to which she told that it was not necessary. On 12-02-2006, she was taken to hospital as she reported her health to be not good. She was admitted in Ghati

where she was unconscious upto 23-02-2006 i.e. on the day on which she expired. He lodged report exh.11 on **20-02-2006**. He further stated that muddemal article bat referred by him is not the same one, which was shown to him.

While under **cross-examination** he stated that his mother suffered from blood pressure and pain in the back since last 10 years prior to her death. That his father used to quarrel after consuming liquor. Omissions are brought about father abusing himself and his sister, father rushed over their mother with intention to beat her. He admitted that he did not inform in his complaint to Police that when he intervened, the bat struck him on the head, and that his mother fell unconscious. He admitted that on 11-02-2006, his mother was oriented and that she had not lodged any complaint regarding beating. He answered that the bat struck him near the ear but he did not suffer any visible injury. He also admitted that he personally did not see his father giving blow with bat on his deceased mother.

9. **PW2** Miss Farah Naaz, daughter of deceased also like her brother merely stated that, father after returning home under influence of liquor, abused and when he rushed to beat her mother, her brother intervened and the bat struck him. Her mother became

unconscious. After two days, there were health problems and so her mother was taken to the hospital. She was in Coma and was under treatment. That her mother died due to health problem and she had blood pressure. Even she denied the article bat confronted to her to be the same bat used by her father. Therefore, she was declared hostile and cross-examined and at such time she admitted that when father was abusing mother, she and her brother persuaded him not to do so, but her father was not in a mood to listen. However, she denied father hitting her mother and she become unconscious.

10. **PW6** Dr.Ramkrishna, who conducted *post mortem* deposed that there were no external injuries but there was evidence of treatment in the form of tracheostomy, On internal examination, there was no injury to scalp or evidence of any fracture. There was haematoma on 4th ventricular, hemorrhage seen in brain-stem. In his opinion, cause of death was reserved till histopathological report. He received the report and therefore, he gave final cause of death “intracranial hemorrhage spontaneous origin i.e. natural cause”.

11. Therefore, on appreciation of above available evidence, here it is emerging that firstly, children of deceased and deceased appellant are merely attributing accusations of deceased appellant coming

home on 10-02-2006 under influence of liquor, indulging in abuses and rushing over deceased wife. But both PW1 Yusuf Khan and PW2 Miss Farah Naaz are unanimous about PW1 Yusuf Khan intervening and he suffering blow near the ear. They both denied that their mother suffered any blow on the head, though both speak that she fell unconscious. According to PW1 informant son, deceased wife was taken to hospital after two days. Both children are attributing health issue of their mother i.e. high blood pressure.

12. PW6 Dr.Ramkrishna, medical expert, who conducted autopsy, has admittedly attributed death due to intracranial haemorrhage due to spontaneous original i.e. natural cause.” Therefore, there is previous medical history reported none other than children of deceased.

CONCLUSION

13. Taking the above evidence into consideration and when witnesses have not supported prosecution on the point of assault by bat like article, which though shown to be recovered, is discarded to be the same article which is before the Court. Therefore, with such quality of evidence, in the considered opinion of this Court, offence of Section 304 Part II of the IPC ought not to have been applied by trial Judge. Hence, case being not proved beyond reasonable doubt,

benefit is required to be extended to accused. Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.186 of 2007 is allowed.
- II) The conviction awarded to appellant – Maheboob Khan s/o Shahnoor Khan (deceased) in Sessions Case No.138 of 2006 by the learned Adhoc Additional Sessions Judge, Aurangabad on 28-05-2007 for the offence punishable under Sections 304 Part II of the Indian Penal Code, stands quashed and set aside.
- III) The appellant (deceased) stands acquitted of the offence punishable under Section 304 Part II of the Indian Penal Code.
- IV) **The bail bonds of appellant (deceased) stand cancelled.**
- V) The fine amount deposited, if any, be refunded to the legal heirs of the appellant (deceased) after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

(ABHAY S. WAGHWASE)
JUDGE