



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

CRIMINAL APPEAL NO.682 OF 2019

Makadya s/o. Vitthal Pawara,
Age : 34 years, Occ. Nil,
r/o. Borpani, Tq. Shirur,
Dist. Dhule

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.H.P.Jadhav, Advocate for appellant
Mrs.V.S.Choudhary, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : APRIL 03, 2024**

JUDGMENT (PER R.G.AVACHAT, J.):-

The appellant was convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and pay fine of Rs.1,000/- with default stipulation, vide judgment and order dated 05.04.2017, passed by learned Addl. Sessions Judge, Dhule, in Sessions Case No.94 of 2014. He is, therefore, in this appeal before us.

2. The facts giving rise to the present appeal are as follows:-

The First Information Report (FIR), Exh.15, was lodged by the son of deceased (Chamar) on 19.02.2014. It has been averred in the FIR that the house of the appellant was just behind the house of informant. The appellant would reside along with his wife and children. It was about 04.00 p.m. of 18.02.2014. The father (Chamar) of the informant went to an open space, adjoining the house of the appellant, for urinating. When the father of the informant was returning, the appellant questioned him, as to why did he urinate by the side of his residence. Chamar (deceased) replied the appellant that most of the villagers use said place for urinating and he had, therefore been there. The appellant got annoyed thereby. He entered his house and returned with a wooden leg of cot and assaulted therewith on the head of the father of the informant. The appellant then fled. The informant and his relations rushed Chamar to hospital. He was shifted to civil hospital, at Dhule. He, unfortunately, succumbed to the injuries, by 09.30 p.m.

3. Based on the FIR (Exh.15), crime vide C.R. No.30 of 2014 was registered at Shirpur Police Station, Dist.Dhule, against the

appellant for offence punishable under Section 302 of Indian Penal Code. The scene of offence panchnama (Exh.10) was drawn. Inquest was conducted under panchnama (Exh.20). Mortal remains of the deceased Chamar was subjected to autopsy. The appellant was arrested. A wooden leg of cot was seized pursuant to the disclosure statement made by him. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, the appellant was proceeded against by filing charge-sheet.

4. Learned Judicial Magistrate, First Class, Shirpur, committed the case to the Sessions Court, Dhule, for trial in accordance with law. The case was, in turn, assigned to learned Addl. Sessions Judge, Dhule (trial Court). The trial court framed Charge (Exh.4). The appellant pleaded not guilty. His defence was of false implication.

5. The prosecution examined nine witnesses and produced in evidence certain documents to establish the charge. The trial court, on appreciation of the evidence in the case, convicted the appellant, as stated above.

6. Learned counsel appointed to represent the appellant would submit that the evidence on record would, at the most, lead to conclusion that it is an offence under Section 304, Part II of Indian Penal Code. According to him, there is no premeditation. The incident occurred in a spur of moment. A quarrel had ensued between the appellant and the deceased for the reason the deceased had urinated by the side of the appellant's house. According to him, none of the ingredients of Section 300 of Indian Penal Code could, therefore, get attracted. He, therefore, submitted that the conviction of the appellant may be converted from offence under Section 302 of IPC to Section 304, Part II of IPC. According to him, the appellant is behind the bars for little over ten years.

7. Learned APP would, on the other hand, submit that the assault was made on the vital part of body of the deceased. It was wooden leg of cot. It indicates that the appellant had intention to eliminate the deceased. She supports the impugned judgment and order.

8. Considered the submissions advanced. Perused the evidence on record. Also gone through the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

9. PW 8 – Dr. Ajit conducted autopsy on the mortal remains of the deceased. Post mortem examination report under his signature finds place at Exh.26 Out of six injuries suffered by the deceased, three were minor abrasions. Injury no.1 was over occipital region of scalp. Another injury was abraded contusion over chest (left side). In the opinion of PW 9 – Dr. Ajit, the deceased died due to *“head injury associated with splenic laceration”*.

10. PW 1 – Vasant and PW 2 – Prakash are panch witnesses to the scene of offence panchnama (Exh.10). We, therefore, do not propose to advert to their evidence in extenso. PW 3 - Lishram was an Advocate, knowing/understanding languages namely, Marathi, Hindi and Pawara. He translated the testimony of the informant from Pawara language into Marathi language.

11. PW 4 – Dashrath (informant) was son of deceased – Chamar. It is in his evidence that the house of the appellant was just behind the house of the informant. The appellant would reside along with his wife and children. It was about 04.00 p.m. of 18.02.2014. The father of the informant went to an open space, adjoining to the house of the appellant, for urinating. When the father of the informant was returning, the appellant questioned him,

as to why did he urinate by the side of his residence. Chamar (deceased) replied the appellant that most of the villagers use said place for urinating and he had, therefore, been there. The appellant got annoyed thereby. He entered his house and returned with a wooden leg of cot and assaulted therewith on the head of the father of the informant. The appellant then fled. The informant and his relations rushed Chamar to hospital. He was shifted to civil hospital at Dhule. He, unfortunately, succumbed to the injuries, by 09.30 p.m.

12. The evidence of PW 4 - Dashrath (informant) has been corroborated by the evidence of PW 5 - Prakash. He reiterated the same. PW 5 - Prakash's evidence further indicates the appellant to have given a single blow on the head of deceased. From the cross-examination of both these witnesses, nothing could be elicited so as to disbelieve their testimony. PW 7 - Bhaskar was Police Officer, who recorded the FIR lodged by PW 4 - Dashrath.

13. The C.A. reports (Exh.32 to Exh.34) indicate that the blood-group of the appellant could not be determined. Same is the case of the blood-group of deceased. The articles sent to F.S.L. for analysis, were found to have been stained with blood of which blood-

group could not be conclusively determined. The reports, however, indicate that it was human blood. Be that as it may.

14. The evidence of the informant (PW 4) indicates that there was no prior enmity between the appellant and the deceased. The deceased had been to a place nearby the house of the appellant for urinating. He urinated there. The appellant questioned him, as to why did he ease himself thereat. It was responded by the deceased contending that the other villagers also urinate at that place and therefore, he urinated there. Admittedly, the appellant got annoyed thereby. He went to his house and returned with a wooden leg of cot and assaulted on the head of the deceased. The appellant allegedly gave second blow on the chest of the deceased.

15. Section 300 of Indian Penal Code defines 'murder'. It reads :

300. Murder.— Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or —

2ndly.— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

16. From the facts and circumstances of the case, we find the appellant to have not inflicted head injury with an intention to eliminate Chamar. It also appears that he did not intend to cause such injury with knowledge that in all probability, same would cause death of Chamar. Although the injury suffered by the deceased was sufficient, in ordinary course of nature, to cause death, there is nothing to indicate that the appellant had intended causing of such injury. Clause “4thly” of Section 300 of Indian Penal Code would also not get attracted.

17. Since it is a common knowledge that a wooden leg of cot happens to be thick, we must attribute the appellant with knowledge that by assaulting on the head of the deceased therewith, he had every knowledge of its consequence being death of the victim. We, therefore, find it to be a case of culpable homicide not amounting murder, punishable under Section 304, Part II of Indian Penal Code. To this extent, interference with the impugned order of conviction

and consequential sentence, is warranted. The appellant is behind the bars since February, 2014, i.e., little over 10 years.

18. For the aforesaid reasons, the appeal partly succeeds. Hence, the following order:-

(i) Criminal appeal is partly allowed.

(ii) Judgment and order dated 5th April, 2017 passed by Additional Sessions Judge, Dhule in Sessions Case No. 94 of 2014 convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code is hereby set aside. The appellant stands acquitted thereof.

(iii) The appellant is convicted for offence punishable under Section 304, Part II of the Indian Penal Code and sentenced to suffer imprisonment for eight years and to pay fine of Rs.1,000/- (Rupees One Thousand), in default, to suffer simple imprisonment for one month.

(iv) The appellant be released forthwith, if not required in any other case.

(V) Fees of Mr.H.P.Jadhav, learned counsel appointed to represent the appellant, is quantified at Rs.15,000/- (Rupees Fifteen Thousand).

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP