



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

CRIMINAL APPEAL NO. 728 OF 2019

Dhanraj Hiranman Sutar
Age: 42 years, Ocu.: Labourer,
R/o Gorgavale, Tq. Chopda,
Dist. Jalgaon

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. A.M. Gaikwad, Advocate for appellant (appointed through Legal Aid)
Ms. U.S. Bhosale, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 05th MARCH, 2024**

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

1. The challenge in this appeal is to the judgment and order of conviction dated 05th February, 2016 passed by Additional sessions Judge, Amalner in Sessions Case No. 35 of 2014. Vide the impugned judgment and order, the appellant was convicted for the offence of murder punishable under Section 302 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer rigorous imprisonment for life imprisonment and fine of Rs.5,000/- with default stipulation. He is, therefore, in this appeal before us.

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

Appellant and Kalpanabai (deceased) were residing in neighbourhood of each other at village Gorgavale, Tq. Chopda, Dist.

Jalgaon. The deceased was a widow. Relationship between the appellant and deceased were not cordial. There used to be quarrel between the two over one or the other reason.

3. On 28th March, 2014, the deceased had spread wheat grains in the front yard of her house. It was about 06:00 p.m. The appellant was engaged in cleaning gutter in front of his house. A spade (hoe) was being used for cleaning the gutter. Dirt/debris from the gutter was being removed and thrown out. The deceased asked the appellant to ensure that the dirt would not fall on the food grains. Heated exchange of words (argument) ensued between the two. The appellant got enraged. He assaulted on the head of deceased with the spade. She received severe injury. The appellant fled. Neighbours rushed Kalpanabai to the hospital. Unfortunately, she breath her last.

4. The F.I.R. (Exh.23) was lodged by P.W.2 – Vasantrao Patil, Village Police Patil. Crime vide C.R. No. 41 of 2014 was, therefore, registered. Scene of offence panchanama (Exh.16) was drawn. The appellant came to be arrested. Mortal remains of Kalpanabai was subjected to autopsy. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, the appellant was proceeded against by filing the charge-sheet before J.M.F.C., Chopda. The case was committed to the Court of Additional Sessions Judge, Amalner ('trial Court') for trial in accordance with law.

5. Trial Court framed charge (Exh.9). The appellant pleaded not guilty. His defence was of false implication.

6. The prosecution examined seven witnesses and produced in evidence certain documents to establish the charge. Trial Court, on appreciation of evidence before it, convicted the appellant and consequently sentenced as stated above.

7. Learned counsel appointed to represent the appellant in this case would submit that it was not an offence of murder. Relationship between the appellant and deceased were not cordial for long. A quarrel was ensued between the two immediately before the incident. The appellant was engaged in cleaning the gutter. A sped was with him for the very purpose. Due to the abuses hurled by the deceased, the appellant got enraged and in heat of passion gave a single blow on the head of the deceased. According to learned counsel, it would at the most be an offence punishable under Section 304 of the I.P.C. The appellant is in jail for about ten years. He, therefore, urged for converting conviction from offence punishable under Section 302 to 304 Part 2 of the I.P.C. and impose sentence of imprisonment the appellant has already undergone.

8. Learned A.P.P. would, on the other hand, submit that a single blow proved fatal. The appellant assaulted on the vital part of the deceased with a sped. The same suggests that the appellant had intended to eliminate the

deceased. Learned A.P.P. would support the impugned judgment and order.

9. Considered the submissions advanced. Perused the evidence on record.

10. P.W.6 – Dr. Snehalkumar conducted the postmortem examination of the dead body of Kalpanabai. The postmortem report is at Exhibit 37. He noticed following injury on her person :-

“CLW on left temporo parietal region extending from temporal region behind the ear merhying mastoid bone extending till Sterno cleido mastoid.”

In his opinion, Kalpanabai died due to cardiopulmonary arrest due to head injury.

11. Medical evidence indicates the deceased to have suffered one injury. True, P.W.5 – Prakash, who claimed to have witnessed the incident, testified the appellant to have given two blows with sped. His police statement is silent to speak of second assault. He was duly confronted with his police statement to bring on record material omission amounting to contradiction. It is reiterated that the medical evidence indicates the deceased to have died of a head injury. P.W.5 – Prakash’s evidence indicates that the appellant was engaged in cleaning of gutter in front of his house. Dirt was being thrown out of the gutter. Kalpanabai had asked him to ensure that her food grains would not get soiled. There was hot exchange of words (argument) between the two. The deceased hurled abuses to the appellant. He too responded the

same way. The appellant got enraged thereby and assaulted on her head with the sped.

12. P.W.2 – Vasant, Village Police Patil, lodged the F.I.R. (Exh.23). He reached the spot on having learnt of the incident from the villagers. He is not an eye witness to the incident. P.W.3 – Shashikant is a witness to the inquest panchanama (Exh.25), while P.W.4 – Ravindra is a witness to the panchanama (Exh.28) whereunder blood stained clothes of the deceased were taken charge of.

13. Appreciation of the aforesaid evidence would indicate that all was not well between the appellant and the deceased. They were residing in the neighbourhood of each other. There used to be frequent quarrels between the two. The incident was preceded by argument (heated exchange of words). The appellant was cleaning the gutter in front of his house. He was, therefore, armed with a sped. Since the deceased hurled abuses against the appellant, he got enraged thereby and hit on her head with the sped. A single blow proved fatal. All these facts indicate the appellant had no predetermination or even intention to eliminate the deceased. It would, therefore, be an offence punishable under Section 304 Part 2 of the I.P.C. He has to be attributed with the knowledge that death would be a consequence of his assault. The appellant is in jail close to ten years i.e. since 07th April, 2014 till date.

14. We are, therefore, inclined to partly allow the appeal in terms of following order :-

ORDER

(I) Criminal appeal is partly allowed.

(II) Judgment and order dated 05th February, 2016 passed by Additional sessions Judge, Amalner in Sessions Case No. 35 of 2014 thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and consequently sentencing to suffer imprisonment for life is hereby set aside. However, rest of the order stands unaltered.

(III) The appellant is convicted for the offence punishable under Section 304 Part II of the Indian Penal Code. He is sentenced to the period which he has already undergone.

(IV) The appellant be set at liberty forthwith, if not required in any other case.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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