



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

CRIMINAL APPEAL NO. 24 OF 2022

Govind Salpatil Khemner
Age: 29 years, Occu.: Labour,
R/o Ambore Shivar, Tq. Sangamner,
Dist. Ahmednagar

..APPELLANT

VERSUS

State of Maharashtra
Through Deputy Police Officer,
Sangamner Division, Sangamner,
Tq. Sangamner, Dist. Ahmednagar

..RESPONDENT

....

Mr. A.D. Raut, Advocate for appellant
Ms. U.S. Bhosle, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT AND
PRAFULLA S. KHUBALKAR, JJ.
DATE : 18th MARCH, 2025**

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

1. This is an appeal against conviction. The appellant herein, vide judgment and order dated 29th November, 2021 passed by the Court of Additional Sessions Judge, Sangamner in Sessions Case No. 32 of 2017, was convicted for the offence punishable under Sections 302, 323 and 324 read with Section 34 of the Indian Penal Code ('I.P.C.'). The details of conviction and consequential sentence imposed against the appellant reads thus :-

Section (I.P.C.)	Sentence	Fine	Default
302/34	Life Imprisonment	5,000/-	-
323/34	-	1,000/-	S.I. for 1 month
324/34	-	2,000/	S.I. for 3 months

The appellant and co-convicts were acquitted of the charge for the offence punishable under Section 307 read with Section 34 of the I.P.C. Neither the State nor the victim preferred appeal against the acquittal.

2. The co-convicts have preferred separate appeals. Their substantive sentence of imprisonment has been suspended. Since the appellant is behind the bars from the date of his arrest, present appeal was taken up for hearing.

3. Learned counsel for the appellant urged only for converting the appellant's sentence from offence punishable under Section 302 of the I.P.C. to the offence punishable under Section 304 of the I.P.C. and urged for imposing sentence which the appellant has already undergone.

4. Learned counsel for the appellant would submit that it was a case of single blow (stab). The incident occurred in spur of moment and preceded by scuffle. The victim (deceased) and others had been to the house of the appellant. The same indicates that they themselves had visited the appellant's house to pick-up the quarrel and beat him up. The evidence of PW 23 – Kacheriya, Medical Officer was brought to our notice which indicates that the appellant herein was medically screened by him on reference by the police officials. Three injuries were noticed on the person of the appellant. One of them was bite over his chest. According to learned counsel, this injury could not be termed to be self inflicted injury. The

prosecution did not offer any explanation therefor. No independent witness was examined. What came before the trial Court was one side of the story put forth by the relations of the deceased. According to him, the prosecution suppressed genesis of the incident.

5. Learned A.P.P. would, on the other hand, submit that it was a case of single blow. The blow was with such a force which resulted in the instantaneous death of Swapnil. The appellant also assaulted the other two. She reiterated the reasons given by the trial Court and urged for dismissal of the appeal.

6. Considered the submissions advanced. Perused the judgment impugned herein. Let us turn to the evidence on record and appreciate the same.

7. Admittedly, the incident took place by 07:30 p.m. on 08th March, 2017 in the front-yard of the house of the appellant. As per the case of the prosecution, Swapnil (deceased) was assaulted by the appellant and his friend Sampat (co-convict). Swapnil, on return to his house, informed the same to his father and other relations. Admittedly, Swapnil alongwith his father, Shivaji and 4-5 others went to the house of the appellant. The appellant was not at his house. His parents were there. According to prosecution witnesses, they had been to the house of the appellant to reason with the appellant in relation to the incident of assault on Swapnil. On

perusal of the evidence of the prosecution witnesses it appears that they suppressed some facts.

8. It is true that the postmortem report (Exh.104) indicates Swapnil died of hemorrhagic shock due to trauma to vital organs due to stab injury. As per the evidence of the prosecution witnesses viz. PW 10 – Shivaji (father of Swapnil) and others, the appellant gave Swapnil a single blow with knife. Paragraph no.17 of the postmortem report indicates Swapnil to have suffered a stab injury. It is true that the stab was with such a force, Swapnil died on the spot. We, therefore, found that the appellant assaulted Swapnil with intention to eliminate him.

9. The matter, however does not rest at that. Admittedly, the appellant and his friend Sampat assaulted Swapnil in the afternoon. Swapnil went to his house and related the incident to his parents and other relations. His father, PW 10 – Shivaji and 4-5 others, therefore, went to the house of the appellant. The appellant was not present at his house. According to prosecution, appellant's mother informed the appellant on cell phone. He, therefore, returned in a car. The appellant was said to have been accompanied with the co-convicts. It was the defence of the appellant that Swapnil and his relations had come to the appellant's house to beat him up. It was also stated that the appellant was assaulted and in the scuffle the incident took place. The F.I.R. (Exh.63) was lodged by PW 1 – Tanaji (cousin of deceased Swapnil). In his cross-examination he denied Swapnil

to have taken a bite at the chest of the appellant. It was also denied that the appellant was assaulted in his house. On appreciation of the evidence of the eye witnesses, they are found to be somewhat inimical with truth. PW 2 – Vikram admitted in his cross-examination that in front of the house of the appellant, broken bangles were noticed. The police seized the same. The police also inspected the house of the appellant. There were blood stains on the floor of the house of the appellant. The blood spots were collected.

10. PW 13 – Vinayak in his cross-examination admitted that the quarrel started after the appellant got out from the car. He denied that the front wind screen of the car was smashed by them. There is, however evidence to indicate that glass of the driver side door of the car wherein the appellant had come, was smashed.

11. PW 23 - Kacheriya, Medical Officer, Rural Hospital, Sangamner examined the appellant and his friend Sampat on 15th March, 2017. Both of them were referred by police. He noticed following three injuries on the person of the appellant :-

1. *Healed laceration on nose, right side, scab fallen pink colour with tenderness at nose.*
2. *Blunt trauma at left lateral aspect of chest.*
3. *Circular imprint bite mark over chest left side just above left nipple, scab partially fallen.*

The history of assault was given by the appellant before his medical examination.

12. The prosecution witnesses, particularly the injured eye witnesses, did not offer any explanation as to how did the appellant suffered injuries. It is reiterated that the deceased alongwith 4-5 persons had been to the house of the appellant. There is reason to believe that they had not been there simply to reason with him (appellant). There is evidence to indicate that scuffle took place between the appellant and others on one hand and the injured and deceased on the other. There were blood spots on the floor of the house of the appellant. There were signs of scuffle in the front-yard of the house of the appellant. The injuries on the person of the appellant have not been explained. Learned counsel for the appellant has thus rightly submitted that case of the appellant falls within Exception 4 of Section 300 of the I.P.C. which reads thus :-

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

13. In view of above, we are inclined to allow the appeal in terms of following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Impugned judgment and order dated 29th November, 2021 passed by the Court of Additional Sessions Judge, Sangamner in Sessions Case No. 32 of 2017, thereby convicting the appellant – Govind Salpatil Khemner for the

offence punishable under Section 302 of the Indian Penal Code, is hereby set aside. He stands acquitted thereof. Instead he is convicted for the offence punishable under Section 304 Part I of the Indian Penal Code and sentenced to suffer rigorous imprisonment for nine years.

(III) Rest of the order to stand unaltered.

SSD

(PRAFULLA S. KHUBALKAR J.)

(R.G. AVACHAT, J.)