



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

Criminal Appeal No. 581 Of 2021

Sudhakar s/o Vasant Sonawane
Age: 55 years, Occu.: Agriculture,
R/o. Deshshirwade, Taluka Sakri
District Dhule.

.. Appellant

Versus

The State of Maharashtra,
Copy to be served on the
Public Prosecutor, High
Court of Judicature of Bombay
Bombay Bench at Aurangabad.

.. Respondent

- * Mr. Nilesh S. Ghanekar, Advocate for the Appellant.
- * Mr. A. V. Lavte, APP for the Respondent.

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

Date On Which The Arguments Were Heard : 29th SEPTEMBER 2025

Date On Which The Judgment Is Pronounced : 13th OCTOBER 2025

J U D G M E N T [Per Mehroz K. Pathan, J.] :

1. The Appellant has filed the present appeal, thereby challenging the judgment dated 21.09.2021 passed by the Additional Sessions Judge, Dhule, thereby the accused/Appellant – Sudhakar Sonawane was found guilty and punished under Section 302 of the Indian Penal

Code for life imprisonment and was acquitted for all other offences charged alongwith the aforesaid Sections. The accused/Sudhakar has thus filed his appeal, challenging the conviction under Section 302.

2. The case of the prosecution is as under :

. That on 18.10.2017, Informant/Deepak was at home at that time his father deceased Shriram had come home running and informed that Sudhakar (brother of deceased Shriram) is armed with a knife and waiting for him near bus stand. The Informant Deepak and Gaurav therefore accompanied their father on a motorcycle which was slightly ahead of them. Sudhakar intercepted the motorcycle of Shriram Sonawane and before the Informant Deepak and Gaurav could reach on the spot, Appellant took out knife and gave a blow to Shriram who collapsed on the spot. The Informant Deepak and his brother Gaurav took the deceased to Dr. Chaure Hospital in Ape Rickshaw. However Dr. Chaure examined Shriram and declared him dead. From the Hospital of Dr. Chaure, the dead body was brought to Government Hospital, Pimpalner and thereafter the complaint was lodged by son of the deceased i.e. Deepak Shriram Sonawane and an offence under Section 302 and the various other Sections of IPC and 67 of the Information Technology Act was registered against the accused person. The investigation was completed and the charge-sheet was filed.

3. The learned trial Court has framed the charge and the prosecution had examined in all six witnesses in support of their claim and relied upon various documents to prove the guilt of the

Appellant/accused and other accused persons in the said crime.

4. After considering witnesses led by the prosecution as well as the defence raised by the accused persons under Section 313 of the Code of Criminal Procedure, the learned trial Court has convicted the Appellant/accused for the offence punishable under Section 302 with life imprisonment.

5. We have heard Mr. Nilesh Ghanekar for the Appellant and the learned APP Mr. A. V. Lavte for the Respondent sole. With their assistance, we have also gone through the record and proceedings of the learned trial Court. The perusal of the record and the evidence led by the prosecution would show that PW-1/Deepak Sonawane, is the son of the deceased and is also the eye-witness to the said incident of assault committed by the Appellant upon the deceased Shriram. The PW-3/Shevantabai is the mother of the deceased and accused and the important witness PW-6 i.e. Investigating Officer/Sunil Bhabad. The prosecution has relied upon the aforesaid three witnesses, to prove the guilt of all accused persons informing the conspiracy to kill the deceased Shriram on the date of incident. However the learned trial court has found that there is no evidence to prove the charge of criminal conspiracy against all accused persons and therefore acquitted accused nos. 2 to 7 from the charge of conspiracy, wrongful confinement, threatening and the relevant provisions of the I.T. Act.

6. Insofar as the evidence against accused no.1/Sudhakar, the

prosecution has mainly relied upon the testimony of eye-witness/Informant PW-1/Deepak Sonawane, PW-2/Dr.Dipak Jadhav who is the autopsy surgeon, PW-3/Shevantabai Sonawane who is the mother of deceased on the point of motive. PW-4/Dipak Bhoi who is the spot pancha and seizure pancha. The PW-5/Samadhan Sonawane who happens to be the panch on the memorandum of the seizure panchanama and PW-6/Investigating Officer - Mr. Sunil Bhabad. The deposition of PW-1/Deepak Sonawane, clearly shows that there was dispute pertaining to agricultural land between accused who is the real uncle and the relatives including the father deceased Shriram. The PW-1/Deepak also stated about the quarrel on account of obscene defamatory and threatening message posted on whatsapp messenger by accused Devendra and Kunal and thereafter threatening to kill Informant and their family. The PW-1 further stated on 12.10.2017 at about 11:00 am., accused Sudhakar and Kunal charged with axe towards the grandmother PW-3/Shevantabai (mother of accused Sudhakar and deceased Shriram) and beat the grandmother. He further stated that on 14.10.2017, grandmother (PW-3/Shevantabai) filed application in police station about the incident.

7. It is further stated on the date of incident i.e. on 18.10.2017 at 07:45 am., the deceased came back from the agricultural land and informed that accused/Sudhakar standing at bus stand holding a knife to kill him. The witness Deepak and his brother Gaurav therefore followed their father deceased Shriram on a separate motorcycle and were at a distance. Accused/Sudhakar intercepted his father's bike and

gave knife blow on the chest of his father. Deceased Shriram who fell down and blood was oozed from his chest. Thus there is a direct implication of the role of present Appellant in the assault on the deceased by the weapon knife.

8. The cross-examination of the said witness does not shatter his testimony to the extent of disbelieving the truthfulness of his version. All that is brought in the cross-examination is that he does not know the nature of the dispute regarding the agricultural land and that he did not state about Sudhakar threatening them in the FIR or that he did not state about the incident dated 12.10.2017 in the FIR. We have perused the FIR at Exhibit-56 which specifically speaks about the incident dated 12.10.2017 reported by PW-1/Deepak wherein the witness had mentioned about the assault carried out by accused Sudhakar on PW-3/Shevantabai (mother of the deceased and accused). Thus the learned trial Court has rightly believed the said witness, who had specifically deposed about the role of present Appellant in assaulting the deceased.

9. The next witness relied upon by the prosecution is PW-2/Dr. Dipak Jadhav, Autopsy Surgeon, who had specifically narrated the injury sustained by the deceased and the probable cause of death was recorded as 'hamorrhagic shock due to injury to vital organ lung'. The injury of stab wound was also noted which was 3.5 cm in length, 1 cm in width and 3 cm in depth. Lower edge was sloping upwards in the third intercostal space medial to the right. There was mid

clavicular line. There were hemorrhagic edges. The separate injury to the lung was also noted in the column no.20 pertaining to right lung as under : upper lobe torn (along lower medial border) hemorrhage present. Thus the said witness has further confirmed that the injuries suffered by deceased are possible by the knife shown to the witness which is marked as Article-A. Thus the homicidal death of the deceased was established to be the result of the assault committed by the Appellant who had also recorded a memorandum under Section 27 of the Evidence Act and gave discovery of the weapon.

10. The next witness PW-3/Shevantabai who is the mother of the accused and the deceased, was also relied on by the prosecution, who specifically stated that the Appellant/Sudhakar was quarreling with deceased Shriram on account of share in the agricultural field and that the accused nos. 1 to 3 were quarreling with her husband and demanding more land from him and that they have come there armed with an axe and she had to run away from the spot to save herself and that she had lodged the complaint in police station regarding the said incident. The testimony of the said witness PW-3/Shevantabai, is reliable inasmuch as the said witness happens to be the real mother of the deceased as well as the accused Sudhakar and there is no prejudice brought on record by the defense in the cross-examination, to discredit her testimony. The motive of the share in agricultural field lends support to the prosecution case that the Appellant Sudhakar was having grievance about the share in the agricultural field and as such had committed the murder of deceased. The testimony of PW-3

therefore corroborates the version of the sole eye-witness PW-1/Deepak Sonawane and therefore was rightly relied upon by the trial Court.

11. The prosecution witnesses PW-4 and PW-5 are the panch witnesses to the spot panchnama and seizure panchanama whereas prosecution witness no.5/Samadhan Sonawane is a panch to the memorandum under Section 27 wherein the Appellant has led to the discovery of the weapon knife which was used by him in the commission of the said crime. The said witness PW-5/Samadhan had supported the prosecution case and has clearly stated about the accused voluntarily recording a memorandum to show and agreed to show that he would give the weapon used in commission of the crime which was thrown near the culvert in village Desh Shirvale. The said memorandum Exhibit 79 was followed by the discovery of the weapon Article-A i.e. a knife which was blood stained and was hidden in a culvert. The said incriminating article i.e. knife which was the weapon used for the commission of crime discovered at the instance of accused, is an important incriminating circumstance, which is not sufficiently explained by the accused. The Investigating Officer PW-6/Sunil Bhabad had also supported the case of the prosecution, wherein he has narrated about the investigation conducted by him.

12. Thus taking into consideration the entire evidence led by the prosecution, it has been sufficiently established that the eye-witness PW-1/Deepak Sonawane, has established the role of the present Appellant in committing murder of the deceased by giving a knife

blow on the chest of the deceased. The doctor who has conducted the postmortem, has corroborated the injury suffered by the deceased and has attributed the same to the possible from the weapon recovered at the instance of the accused Sudhakar. The PW-3/Shevantabai who happens to be the mother of the deceased as well as the accused, had sufficiently supported about the motive for commission of the said crime. The panchas have also supported the prosecution case led in particularly the memorandum under Section 27 of the Evidence Act, recorded by the prosecution of accused Sudhakar on the next day of his arrest. The Appellant has also failed to give any explanation under Section 313 Cr.P.C. as to why he was implicated in the offence. Thus after considering the entire evidence and the arguments of the learned Counsel for the Appellant and the State and the record and proceedings, we are of the opinion that the impugned judgment convicting the Appellant for causing death of deceased Sudhakar, does not call for any interference.

. However the Counsel for the Appellant at this stage has advanced the arguments for alternate punishment, for converting the punishment from one under Section 302 to 304 part-II. It is the submission of the learned Counsel for the Appellant that it is a case of single blow and that no undue advantage was taken by the Appellant in committing more barbaric cruelty upon the deceased. It was his submission that the prosecution had brought on record that the deceased Shriram had seen the Appellant standing at the spot of incident with a knife in his hand. The deceased had therefore himself approached the accused and given a provocation to assault. It is

therefore the submission of the learned Counsel for the Appellant that the accused shall be given an advantage of exception-IV of Section 300, on the ground that there was no premeditation and the single blow shows that it was inflicted in a sudden fight in the heat of passion without the accused/Appellant having taken any undue advantage or acted in a cruel or unusual manner. The explanation to the said exception-IV also provides that it is immaterial in such cases which party offers the provocation or commits the first assault. It is therefore the submission of the learned Counsel for the Appellant that the act of the Appellant would fall under exception-IV of Section 300 and therefore the punishment of the Appellant may be converted from one under Section 302 to 304 part-II.

13. The learned APP on the other hand submits that the fact that the Appellant was standing on the spot of incident with a knife in his hand was sufficient enough to establish the intention and premeditation on the part of the accused and therefore the case would not fall under any of the exceptions of Section 300 of IPC and would not fall under Section 304 Part-II. It is the submission that the single blow theory is not sufficient to prove that there was no intention to commit murder. The Hon'ble Supreme Court in the judgment of **Virsa Singh Vs. State of Punjab**, AIR 1958 SC 465 has specifically dealt with the single blow theory and has observed that the facts and circumstances of each case will have to be taken into consideration before accepting the single blow ground taken by the accused.

14. We have gone through the evidence led by the prosecution and the record and proceeding with the assistance of learned Counsel for the Appellant and the learned APP for the State. The perusal of the testimony of the PW-2/Dr. Dipak Jadhav who has conducted the postmortem would also show that there was no specific statement in the examination-in-chief whether the injury was sufficient in the ordinary course of nature to cause death of the deceased. The particular portion was also asked to the said Doctor that if a person who has suffered an injury on lung is receiving prompt and proper medical aid then he can survive. The same was answered as 'True' by the PW-2/Dr.Dipak Jadhav. In the absence of prosecution establishing beyond doubt about the injury caused by accused was sufficient in the ordinary course to cause death. The intention to commit murder, by the Appellant was not sufficiently established though the knowledge is established.

. We find that in the facts and circumstances, the fact that the Appellant was standing near the bus stand with a knife in his hand, was very much known to the deceased Shriram and the witness/Deepak and the deceased Shriram went to the accused Sudhakar and PW-1/Deepak followed him. The act was a result of heat of passion and the appellant did not take undue advantage. Taking into consideration that there was only a single blow caused by the knife and that there was no other stab wound found on the deceased, the case of the Appellant would therefore fall under exception-IV of Section 300 which is punishable under Section 304 part-II.

15. We are therefore of the opinion that though the conviction of the Appellant is upheld however the punishment is converted from Section 302 IPC to Section 304 part-II of IPC to the extent of his imprisonment already undergone till date. It is informed that the Appellant is in jail since the date of commission of offence i.e. 18.10.2017 and has almost undergone the period of eight years of imprisonment as against the maximum sentence of ten years under Section 304 part-II of IPC. Therefore we find it appropriate that the Appellant/Sudhakar shall be released from the jail forthwith, if not required for any other crime.

16. The Criminal Appeal is partly allowed in aforesaid terms with no order as to costs.

[MEHROZ K. PATHAN]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE

Najeeb..