



Judgment

515 apeal206.19

1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.206 OF 2019

1. Vinod Shashikant Ingle,
aged about 36 years, occupation:
labourer.

2. Pooja Vinod Ingle,
aged about 24 years, occupation:
labourer.

Both appellant Nos.1 and 2 are residing at
Jatripala, Shanti Nagar, Palso Badhe,
taluka and district: Akola. **Appellants.**

:: VERSUS ::

The State of Maharashtra, through Station
Officer, Borgaon Manju Station, taluka and
district Akola. **Respondent.**

Shri Rahul Dhande, Counsel for Appellants.
Shri N.B.Jawade, Additional Public Prosecutor for the
Respondent/State.

CORAM : URMILA JOSHI-PHALKE & NANDESH S.DESHPANDE, JJ.
CLOSED ON : 03/12/2025
PRONOUNCED ON : 15/12/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

2

1. By this appeal, appellants (the accused persons) have challenged judgment and order dated 17.5.2018 passed by learned Sessions Judge, Akola (learned Judge of the trial court) in Sessions Trial No.96/2017.

2. By the said judgment impugned in this appeal, the accused persons are convicted for offence punishable under Section 302 read with 34 of the IPC and sentenced to undergo rigorous imprisonment for life each and pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for 3 months.

They are further convicted for offence punishable under Section 452 read with 34 of the IPC and sentenced to undergo rigorous imprisonment for two years each and pay fine Rs.1000/-, in default, to undergo rigorous imprisonment for further period of one month each.

3

3. Brief facts of the prosecution case are as under:

(A) Aniruddha Ingle (the informant) is brother of Arun Ingle (the deceased) residing adjacent to house of the informant along with his family. Accused No.1 Vinod Ingle is nephew of the deceased, who was also residing along with his wife adjacent to house of the deceased. On the day of the incident, there was a dispute between the deceased and the accused persons on account of throwing garbage on verandah of the house of the deceased. Regarding the said incident, accused No.2 Pooja Ingle lodged report, which was registered as N.C.Report at Borgaon Manju Police Station, district Akola vide N.C.Report No.692/96. It is alleged that the deceased was always objecting act of accused No.2 Pooja Ingle throwing the garbage. On 26.11.2016, i.e. on the day of the incident, there was a quarrel between the deceased

4

and accused No.2 Pooja Ingle in the morning. On the same day, i.e. 26.11.2016, at about 1:30 pm, when the informant was present at his house, he heard sound of the quarrel from the house of the deceased and, therefore, he went towards the house of the deceased and witnessed the quarrel between the accused persons and the deceased. The deceased was telling accused No.1 Vinod Ingle that his wife accused No.2 Pooja Ingle was throwing garbage in front of his house. However, accused No.1 Vinod Ingle started assaulting the deceased by means of “bamboo stick” as well as the head of the deceased was bashed against a wall and he was also assaulted by fists and kick blows. Due to the assault, the deceased sustained grievous injuries. The informant rushed towards the deceased and rescued him, but the deceased became unconscious. Thereafter, the

5

accused persons left the house of the deceased. The deceased was taken to the “Vidarbha Hospital” at Akola. However, during treatment, he succumbed to the injuries. On the basis of the said report, the police registered the crime against the accused persons.

(B) After registration of the crime, after completing formality of investigation, recording statements of witnesses, recovery of weapon at the instance of accused he submitted chargesheet against the accused persons.

(C) Learned Sessions Judge, after committal the case by learned Magistrate, framed charge vide Exh.32 against the accused persons. The accused persons denied the charge and claimed to be tried.

6

(D) In support of the prosecution case, the prosecution has examined in all 8 witnesses, they are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Aniruddha Ingle, informant	37
2	Karan Gautam Chakre, grand-son of the deceased and eyewitness	41
3	Sujata Aniruddha Ingle, eyewitness	44
4	Dr.Purshottam Pachpore, Medical Officer	48
5	Dadarao Shende, pancha on spot pan- chanama	51
6	Purshottam Dhande, police constable who has drawn spot panchanama	62
7	Yuvraj Uike, investigating officer	68
8	Trishul Onkarrao Padole, Medical Officer	82

(E) Besides the oral evidence, the prosecution placed reliance on C.A.Reports Exhs.24 to 26, report Exh.38, FIR Exh.39, seizure of clothes of the deceased Exh.40, medical certificate Exh.49, requisition to the

7

medical officer Exh.50, spot panchanama Exh.52, memorandum statement of accused No.1 Vinod Ingle Exh.53, recovery panchanama Exh.54, requisition to the Director of FSL Exhs.55 to 57, duty pass Exh.58, requisition to the medical officer Exh.61, arrest panchanama of accused No.1 Vinod Ingle Exh.64, requisition to the medical officer Exh.65, medical certificate of accused No.1 Vinod Ingle Exh.66, inquest panchanama Exh.70/6, intimation to the police Exh.70/9, death summary Exh.70/10, property seizure memo Exh.70/11, query to the medical officer Exh.73, opinion of the medical officer Exh.74, postmortem report Exh.76, arrest panchanama of accused No.2 Pooja Ingle Exh.77, property seizure Exh.78, requisition to the medical officer Exh.80, medical certificate of injured Exh.81, and N.C.Report by accused No.2 Pooja Ingle Exh.87.

8

(F) All the incriminating evidence is put to the accused persons in order to obtain their explanations. The defence of the accused persons is of total denial and of false implication.

(G) Learned Judge of the trial court appreciated the evidence and held the accused persons guilty and convicted and sentenced them as the aforesaid.

(H) Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused persons on the ground that learned Judge of the trial court has wrongly relied upon the evidence of informant PW1 Aniruddha Ingle; grandson of the deceased and eyewitness PW2 Karan Chakre; and eyewitness PW3 Sujata Ingle. Their evidence is not consistent and due to previous enmity, they are implicated in the allege offence.

4. Heard learned counsel Shri Rahul Dhande for the accused persons and learned Additional Public Prosecutor Shri N.B.Jawade for the State and with their able assistance, we have gone through the evidence adduced by the prosecution and relevant documents on record.

5. Learned counsel for the accused persons submitted that though informant PW1 Aniruddha Ingle claimed himself as eyewitness of the incident, PW2 Karan Chakre and PW3 Sujata Ingle nowhere state about his presence at the spot of the incident. PW2 Karan Chakre also nowhere states regarding presence of PW3 Sujata Ingle at the spot of the incident and PW3 Sujata Ingle has not stated regarding presence of PW2 Karan Chakre at the spot of the incident. All these three witnesses claimed themselves as eyewitnesses, but their evidence is not consistent with each other. The medical evidence is also not supporting and is

10

contrary to the ocular evidence of the eyewitnesses. No external injury was found on the person of the deceased. Medical Officer PW4 Dr.Purshottam Pachpore, who examined the deceased initially, has admitted during the cross examination that when blow is given by lethal weapon like “wooden stick,” external injuries will be there on head. He further admitted that when head of a person is dashed repeatedly against wall, there will be external injury. Whereas, no external injury was sustained by the deceased. Thus, the medical evidence is also contradictory to the oral evidence and, therefore, the prosecution case fails.

He further submitted that the evidence of medical officer PW8 Dr.Trishul Padole, who conducted postmortem examination of the deceased, also admitted that opinion relating to weapon “stick,” which is stated by him in examination-in-chief, is not mentioned specifically in Exh.76. He further submitted that statements of

11

eyewitnesses PW2 Karan Chakre and PW3 Sujata Ingle were recorded belatedly and no explanation is put forth by the prosecution for the said belated statements and, therefore, possibility of embellishment cannot be ruled out. Alternatively, he submitted that even accepting the evidence of these witnesses as it is, especially the evidence of eyewitness PW3 Sujata Ingle, it shows that accused No.1 Vinod Ingle was not present when initial quarrel took place between accused No.2 Pooja Ingle and the deceased. Accused No.2 Pooja Ingle has lodged N.C.Report against the deceased, the informant Aniruddha Ingle, and wife of the informant Babita. The evidence of eyewitness PW3 Sujata Ingle further shows that, at about 1:30 pm, accused No.2 Pooja Ingle has disclosed the said incident to accused No.1 Vinod Ingle, who is her husband and, thereafter, immediately, accused No.1 Vinod Ingle went towards the house of the deceased and the alleged incident has taken

12

place. Accused No.2 Pooja Ingle disclosed to accused No.1 Vinod Ingle that the deceased caught hold of her hands and had beaten her due to which accused No.1 Vinod Ingle got annoyed and the alleged incident has taken place. He submitted that, therefore, the case of the accused persons covers under Exception-1 "Grave and Sudden Provocation" and, therefore, the offence would come under lesser Section 304 Part-II. In view of that, the appeal deserves to be allowed.

6. Learned Additional Public Prosecutor for the State submitted that informant PW1 Aniruddha Ingle; grandson of the deceased PW2 Karan Chakre; and PW3 Sujata Ingle, are eyewitnesses to the said incident. The evidence of PW2 Karan Chakre and PW3 Sujata Ingle is consistent with each other as PW2 Karan Chakre entered into the house by backdoor. Whereas, PW3 Sujata Ingle witnessed the incident from front door. Therefore, question

13

of witnessing each other does not arise. Their evidence is consistent as far as material particulars are concerned. The evidence of these witnesses is further corroborated by the medical evidence of Medical Officers PW4 Dr.Purshottam Pachpore and PW8 Dr.Trishul Padole. It is further substantiated by circumstantial evidence. Thus, the prosecution has established that the death of the deceased is “homicidal” one. The N.C.Report lodged by accused No.2 Pooja Ingle sufficiently shows that there was previous dispute between the accused persons and the deceased. The evidence of PW3 Sujata Ingle specifically shows that as soon as accused No.2 Pooja Ingle disclosed about the incident took place in the morning, accused No.1 Vinod Ingle entered into the house of the deceased and assaulted him when he was sleeping. Thus, “intention” of the accused reveals from the said circumstances. The death of the deceased is, “due to head injury.”. Thus, the death of the deceased is

14

“homicidal” one is also established by the prosecution. He further submitted that the case of the accused persons does not cover under Exception as there is nothing on record to show that there was any “provocation” for accused No.1 Vinod Ingle due to which he could not control and assaulted the deceased. In view of that, the appeal being devoid of merits is liable to be dismissed.

7. After hearing both the sides and perusing the entire evidence on record, admittedly, the deceased has not sustained any external injuries, as per the evidence adduced by the prosecution.

8. Whether the death of the deceased is “due to assault” and “homicidal” caused by the accused persons, is question to be answered.

9. To prove the death of the deceased is “homicidal” one, the prosecution placed reliance on the evidence of PW4

15

Dr.Purshottam Pachpore, who initially examined the deceased, when he was brought to the hospital. His evidence shows that he was working as Residence Medical Officer in “Vidarbha Hospital.” On 26.11.2016, the deceased was brought by a police constable to the hospital with history of assault. He conducted medical examination and during the examination, he found that he has sustained head injury and it was difficult for him to breath. He has also witnessed weakness in the right side of upper limb and lower limb as well as palpitation. He referred the deceased for CT Scan Examination. The CT Scan Report shows “*left temporal I.C. bleed with sub arachnoid hemorrhage*”. He then suggested surgery. The surgery was performed by Neurosurgeon of “*left frontal temporal parietal craniotomy with evacuation of intraparenchymal hematoma*”. Then, he issued certificate Exh.49. The injury noticed by him was fresh in nature. The weapon used was blunt weapon. The

16

injury as noted by him is possible if head is bashed against a wall. He further stated that certificate was issued by Dr.Praveen Awachar attached to the "Vidarbha Hospital." The injuries noted by him in Exh.49 are grievous in nature. The deceased died on 30.11.2016. His cross examination shows he was aware that the case of the deceased was "*medico-legal case*". After the CT Scan was conducted, he came to know nature of injuries sustained by the deceased. He further admitted that certificate Exh.49 does not indicate that the deceased has sustained any external injury on his head. He further admitted that in Exh.49, no data is given to know whether the injury was fresh in nature. It further discloses that when a blow is given by lethal weapon like wooden "stick", external injuries will be there on the head. He further admitted that when head of a person is bashed repeatedly against a wall, there will be external injury.

17

10. PW8 Dr.Trishul Padole is examined to prove postmortem notes. As per his evidence, on 30.11.2016, he has conducted postmortem on the dead body of the deceased. On conducting the postmortem, he found following external injuries on the persons of the deceased:

“1. Stitch wound over left fronto-parieto-temporal region measuring 30 cm with 49 stapled sutures. (It is a part of treatment)

2. Intravenous puncture mark present over left cubital fossa. (It is also a part of treatment). Both wounds are ante-mortem”

On internal examination, he found, following injuries:

“underscalp hematoma over left fronto-parietal area of size 18x2 cm reddish brown in colour.

18

1. Left temporo-parietal bone of size 16x12 cm, corresponding to craniotomy wound mention in column No.17.”

He further found that all the injuries are corresponding with the external injuries. The injuries mentioned in column Nos.17 and 19 are sufficient to cause death in ordinary course of nature. The cause of death of the deceased is, “*due to head injury*”. Accordingly, he prepared postmortem notes Exh.76.

His cross examination shows that, as far as cause of death is concerned, it is not challenged by the defence. His entire cross examination is regarding opinion given by him as to the weapon.

11. Recital of the inquest panchanama shows that there was injury on the left portion of the head of the deceased. Thus, the medical evidence shows that the death of the deceased is, “*due to head injury*”.

19

12. Whether the death of the deceased is caused “due to the assault” by accused No.1 Vinod Ingle, is to be ascertained on the basis of the evidence adduced by the prosecution.

13. The evidence of informant PW1 Aniruddha Ingle, who is eyewitness of the incident, shows that on the day of the incident, i.e. 26.11.2016, there was a quarrel between accused No.2 Pooja Ingle and the deceased as accused No.2 Pooja Ingle used to throw garbage in front of the house of the deceased. The evidence further discloses that accused No.2 Pooja Ingle was in habit of throwing garbage in courtyard of the deceased and, therefore, on that day, there was a quarrel between the deceased and accused No.2 Pooja Ingle. However, the matter was settled. At about 1:30 pm, he heard shouts of accused No.1 Vinod Ingle and the deceased from the house of the deceased and, therefore, he along with his wife immediately went to see as to what has

20

happened. He witnessed that accused No.2 Pooja Ingle had gagged the mouth of the deceased and accused No.1 Vinod Ingle was giving blows of kicks and fists. Accused No.1 Vinod Ingle was also having “stick” in his hands. He further witnessed that accused No.1 Vinod Ingle was bashing head of the deceased against a wall and, therefore, he dragged out accused No.1 Vinod Ingle from the house and the accused persons have assaulted the deceased on his stomach and chest by means of wooden “stick”. Accused No.1 Vinod Ingle has also given threats to them. As the deceased became unconscious, he immediately called an auto-rickshaw with the help of PW2 Karan Chakre and took the deceased initially to the police station and, thereafter, to the Government Hospital at Akola. After admitting the deceased in the hospital, he approached the police station and lodged the report, which is at Exh.38 and FIR is at Exh.39. He has identified the clothes of the deceased as

21

well as the “stick” which was in the hands of accused No.1 Vinod Ingle.

His cross examination shows that he had taken the deceased to Borgaon Manju Police Station at about 2:00 pm. He further stated that he has narrated the incident to the police, but the police have not made any enquiry with him. He denied that there are 50-60 houses around his house, but he stated that there are 10-15 houses and the said houses are at distance of 15-100 feet. He further admitted that shouts had taken place at the time of the incident. Some omissions are also brought on record during his cross examination. He further admitted that he is not aware whether accused No.2 Pooja Ingle has lodged the report regarding the incident to the Borgaon Manju Police Station on that day. An attempt was made to show that there was a dispute between the deceased and the informant and the informant himself has assaulted the

22

deceased and, therefore, he sustained the injuries, which is denied by PW1 Aniruddha Ingle. It also came in his cross examination that at the relevant time, wife and son of the deceased were not in the house. His cross examination further shows that he along his entire family was not in the hospital, till 27.11.2016. They were continuously with the deceased in the hospital on 27.11.2016 and 28.11.2016. He specifically admitted that he did not witness on what places the deceased has received injuries.

14. To corroborate the version of PW1 Aniruddha Ingle, another eyewitness PW2 Karan Chakre is examined. He has corroborated the version of PW1 Aniruddha Ingle on material particulars as far as the assault is concerned.

15. Learned defence counsel has vehemently submitted that there is an inconsistent evidence as PW1 Aniruddha Ingle has not stated about the presence of PW2

23

Karan Chakre and PW2 Karan Chakre has not stated about presence of PW1 Aniruddha Ingle and PW3 Sujata Ingle.

16. Learned Additional Public Prosecutor for the State pointed out that PW2 Karan Chakre entered into the house from the backdoor by opening latch by inserting his hand. Whereas, PW1 Aniruddha Ingle entered into the house from the front door. PW3 Sujata Ingle also witnessed the incident from the front door and, therefore, question of witnessing each other does not arise. The evidence of PW2 Karan Chakre also shows that he entered into the house from the backdoor by opening latch by inserting his hand. His evidence shows that at the relevant time, he was in the house of Dadu Sunil Ingle and Nalanda Ingle. As he heard shouts, he entered into the house from backdoor by opening the latch. He witnessed that the accused persons were assaulting his grandfather i.e. the deceased. Accused No.2 Pooja Ingle has gagged his mouth. Whereas, accused No.1

24

Vinod Ingle was bashing his head against a wall. He stated that accused No.1 Vinod Ingle was assaulting by means of kicks and fists. He shouted and, therefore, PW1 Aniruddha Ingle, PW3 Sujata Ingle, and Babita, the wife of PW1 Aniruddha Ingle came there. They took the accused persons out of the house and, thereafter, took the deceased to the hospital. Initially, they took him to Dr.Patel and, thereafter, took him to the hospital at Akola. His cross examination shows that the house of Nalanda Ingle and the house of Dadu Ingle are adjacent to their house. He further admitted that if any person shouts loudly, it is audible to the adjacent houses. He specifically stated that as it was afternoon, persons from the other houses did not come to their house. He witnessed the deceased and accused No.1 Vinod Ingle and accused No.2 Pooja Ingle in the said house when he entered in the house.

25

On the basis of this cross examination, an attempt was made to show that he has not narrated about the presence of PW1 Aniruddha Ingle and PW3 Sujata Ingle. Admittedly, his evidence shows that after he entered into the house, after some time, PW1 Aniruddha Ingle and PW3 Sujata Ingle came there and, thereafter, they rescued the deceased from the clutches of the accused persons. The omission, that he has not stated that accused No.1 Vinod Ingle was bashing the head of the deceased against the wall, is brought on record by the defence.

PW3 Sujata Ingle, also deposed on the similar line. Her evidence shows that at about 1:30 pm, as she was proceeding to her tuition, she saw accused No.1 Vinod Ingle and accused No.2 Pooja Ingle talking to each other and accused No.2 Pooja Ingle was telling accused No.1 Vinod Ingle that the deceased caught hold of her hands and has beaten her. Accused No.1 Vinod Ingle then started coming

26

to the house of the deceased. One wooden “stick” was kept under roof of kitchen. He took out the same and went inside the house of the deceased. The deceased was sleeping. Accused No.1 Vinod Ingle assaulted the deceased by means of the “stick”. She was behind accused No.1 Vinod Ingle. She has also witnessed accused No.2 Pooja Ingle coming and she apprehended that she would be assaulted and, therefore, she gave a push to accused No.1 Vinod Ingle and accused No.1 Vinod Ingle fell down by the side of the television. Thereafter, she went away. She went towards the road and met Sadanand Ingle, but due to fear, she has not narrated anything to him. They again returned to the house of the deceased. The house of the deceased was closed. She tried to push the door and she peeped through the window. She saw that accused No.1 Vinod Ingle was bashing the head of the deceased on the wall and accused No.2 Pooja Ingle has gagged his mouth. Her

27

evidence further shows that as there was no one in the house of Sadanand Ingle, she again came to the house of the deceased and witnessed PW2 Karan Chakre and her parents, who were present there. During her cross examination, it came on record that as she was afraid, she was unable to shout and, therefore, she has not shouted. She has admitted that she did not feel immediately that she should inform her parents about the incident. Her evidence further shows that Sadanand Ingle did not come with her as he was under the influence of liquor. From her cross examination, it is further brought on record that she was present in the house from 26.11.2016 to 28.11.2016.

From this cross examination, an attempt was made to show that though she was present in the house, her statement was not recorded immediately, but it was recorded on 10.12.2016. Thus, there is inordinate delay in recording the statement of the eyewitness.

28

17. PW5 Dadarao Shende, acted as pancha on spot panchanama, has not supported the prosecution case and left loyalty towards the prosecution case.

18. PW6 Purshottam Dhande, investigating officer who has carried out initial part of the investigation, has drawn spot panchanama by visiting the spot of the incident. He has also issued a letter to doctor at "Vidarbha Hospital" for recording statement of the deceased, but the deceased was not in a position to give a statement. He arrested accused No.1 Vinod Ingle by drawing arrest panchanama Exh.64. The accused made a memorandum statement and produced "stick," which was seized by him.

His cross examination shows that the accused was arrested at village Palso-Badhe itself.

He further admitted that there are several houses near Borgaon Manju, but he has not made any efforts to

29

take panchas from nearby police station. During his cross examination, it is brought on record that immediately, after arrest, accused No.1 Vinod Ingle expressed a desire to make a voluntary statement of disclosure.

Thus, the cross examination itself shows that it was the voluntary statement of accused No.1 Vinod Ingle and on his statement he led them and the “stick” was recovered at his instance.

19. PW7 Yuvraj Uike, is another investigating officer, who has recorded relevant statements of the witnesses. As far as his cross examination is concerned, he admitted that he did not visit village Palso Badhe for investigation, till 10.12.2016. He also admitted that no eyewitness from village Palso-Badhe came to him, till 10.12.2016 to narrate the information about the offence. He further admitted that accused No.2 Pooja Ingle has lodged report on

30

26.11.2016 at 12:30 pm and non-cognizable offence was registered.

20. On the basis of the evidence adduced by the prosecution, an attempt was made to show that as there was previous enmity, the accused persons were implicated falsely in the alleged offence.

21. Learned counsel for the accused persons vehemently submitted that Medical Officers PW4 Dr.Purshottam Pachpore and PW8 Dr.Trishul Padole both have admitted that if head is bashed repeatedly, there has to be external injury.

He further invited our attention towards admission of Medical Officer PW4 Dr.Purshottam Pachpore, who has admitted that if a blow was given by “stick”, there has to be external injury.

31

On the basis of these admissions, he submitted that there was no external injury on the person of the deceased and, therefore, the allegation levelled by the prosecution witnesses is contrary to the medical evidence and it is liable to be discarded.

Perusal of the evidence of PW1 Aniruddha Ingle, PW2 Karan Chakre, and PW3 Sujata Ingle shows that none of them states that accused No.1 Vinod Ingle has given a blow of the “stick” on his head. The evidence of these three witnesses is consistent that they witnessed that accused No.1 Vinod Ingle was bashing head of the deceased against the wall. Therefore, the contention of learned defence counsel, that the medical evidence is contrary to the oral evidence, is not sustainable.

He further submitted that as PW4 Dr.Purshottam Pachpore and PW8 Dr.Trishul Padole have admitted that if

32

head is bashed repeatedly, there has to be external injury, no external injury injury is found on the person of the deceased and, therefore, this evidence is also contrary to the medical evidence.

Perusal of the evidence of these three witnesses shows that none of them has stated that they have witnessed accused No.1 Vinod Ingle bashing the head of the deceased repeatedly against the wall. Their evidence is consistent that when they witnessed, accused No.1 Vinod Ingle was bashing the head of the deceased against the wall and immediately PW1 Aniruddha Ingle dragged accused No.1 Vinod Ingle from the house.

Similar is the evidence of PW2 Karan Chakre and PW3 Sujata Ingle.

33

Therefore, this contention of learned counsel for the defence, that the medical evidence is contrary to the oral evidence, is also not sustainable.

22. On appreciation of the evidence, the fact, that there was a dispute between the deceased and the accused persons on throwing garbage in the courtyard of the house of the deceased is established by the prosecution. PW1 Aniruddha Ingle, has stated about the same that on the day of the incident, i.e. 26.11.2016 also, in the morning, the alleged incident of throwing garbage has taken place and, therefore, there was a quarrel between the deceased and PW1 Aniruddha Ingle and his wife. Accused No.2 Pooja Ingle has lodged a report regarding the said incident dated 26.11.2016 to the Borgaon Manju Police Station. The N.C.Report filed by accused No.2 Pooja Ingle is at Exh.87, which shows that she has lodged the report against the deceased, PW1 Aniruddha Ingle, and Babita, wife of PW1

34

Aniruddha Ingle. The story narrated by her is that there was a quarrel between her and the deceased and PW1 Aniruddha Ingle on 26.11.2016 and she was assaulted by these persons. The timing of the incident narrated is 10:00 am to 10:30 am..

23. The prosecution story in the present case is also that on that day, at about 10:00 am to 10:30 am, as accused No.2 Pooja Ingle has thrown garbage in the courtyard of the house of the deceased, there was a quarrel between them, but the said quarrel, subsequently, was settled and all went to their houses. The evidence of PW3 Sujata Ingle shows that when she was proceeding to attend her tuition, she witnessed the accused persons and accused No.1 Pooja Ingle was disclosing the incident took place in the morning and, therefore, accused No.1 Vinod Ingle entered into the house of the deceased and the alleged incident has taken place.

35

Though some omissions are brought on record, during the cross examination, the investigating officer has also admitted about non-disclosure of the said fact before him while recording the statement of PW2 Karan Chakre. Perusal of the statement also shows that he has not stated before the investigating officer while recording the statement that the head of the deceased was bashed against the wall by accused No.1 Vinod Ingle and, therefore, the evidence of PW2 Karan Chakre, regarding bashing of the head of the deceased by accused No.1 Vinod Ingle, is a material omission.

24. Recital of the FIR also shows that the fact of bashing the head of the deceased against the wall is not narrated by PW1 Aniruddha Ingle.

25. As far as PW3 Sujata Ingle is concerned, she has narrated that accused No.1 Vinod Ingle was bashing the

36

head of the deceased against the wall and, therefore, there is an improvement in the evidence of PW1 Aniruddha Ingle and PW2 Karan Chakre, but this fact is narrated by PW3 Sujata Ingle.

26. The medical evidence shows that the deceased has sustained the injury i.e. the head injury due to assault in the alleged incident. Admittedly, there are some improvements in the evidence of PW1 Aniruddha Ingle and PW2 Karan Chakre.

27. It is a well settled that “*falsus in uno, falsus in omnibus*” (false in one thing, false in everything) is neither a sound rule of law nor a sound rule of practice. It is not applicable in criminal cases in India, as witnesses may be partly truthful and partly false in their evidence. The experience shows that the evidence of many witnesses contains a grain of untruth a some exaggeration or

37

embellishment. This many a times happens perhaps due to fear in the mind of the witnesses that their testimony may not be accepted. Discrepancies in deposition of witnesses are always there due to normal error of observation, normal error of memory due to lapse of time, due to mental disposition etc. which needs to be ignored. The prosecution would fall only wherein inconsistency goes to the root of the case, otherwise it becomes the duty of the Court to sift truth from falsehood by coming out nuggets of truth of evidence of witnesses examined by the prosecution. If such exercise is possible, their evidence cannot be discarded wholly. At the most, inconsistent part of the version of the witnesses may be discarded and rest of the testimony which is in general agreement with version of other witnesses is to be accepted.

28. Even, though the said fact is not stated by PW1 Aniruddha Ingle and PW2 Karan Chakre, regarding bashing of the head of the deceased against the wall, the said fact is

38

stated by PW3 Sujata Ingle. It is further corroborated by the medical evidence that the deceased has sustained the head injury in the said incident. There is no defence of the accused persons that the deceased has sustained the head injury either by fall or any other reasons. Filing of the N.C.Report by accused No.2 Pooja Ingle shows that there was an enmity between the deceased and the accused persons. The evidence of PW3 Sujata Ingle specifically shows that she has witnessed accused No.1 Vinod Ingle proceeding towards the house of the deceased after accused No.2 Pooja Ingle has disclosed the incident took place in the morning and, thereafter, he has assaulted the deceased. The deceased was found injured in his own house and witnessed by PW1 Aniruddha Ingle; PW2 Karan Chakre; and PW3 Sujata Ingle.

39

29. Thus, the evidence of the prosecution witnesses is consistent as far as the incident is concerned and it is not shattered during the cross examination.

30. The evidence of PW2 Karan Chakre and PW3 Sujata Ingle is criticized by the defence on the ground that there is delay in recording statements of two eyewitnesses i.e. PW2 Karan Chakre and PW3 Sujata Ingle. Admittedly, the alleged incident has taken place on 26.11.2016 and their statements were recorded on 10.12.2016.

31. It is also a part of the evidence that the deceased was admitted in the hospital from 26.11.2016 to 30.11.2016 and, thereafter, the deceased succumbed to the injuries. The death report placed on record shows that on 30.11.2016 the death of the deceased occurred during the treatment.

32. PW2 Karan Chakre is the grandson and PW3 Sujata Ingle is niece of the deceased. Due to the death of

the deceased, they may have been in a grief and may not have approached the police. The evidence also shows that the police have also not approached them to record their statements.

33. As far as the delay in recording statements is concerned, the law is settled by the decision of the Hon'ble Apex Court in the case of **Gunnana Pentayya alias Pentadu & ors vs. State of Andhra Pradesh**, reported in 2008 ALL MR (Cri) 2540 (SC) that, "*mere delay in recording the statement of witnesses is not fatal unless a specific question is put to the investigating officer regarding reason for delay*".

This aspect is further considered by the Hon'ble Apex Court in the case of **Firoz Khan Akbarkhan vs. State of Maharashtra**, reported in 2025 SCC OnLine SC 627, wherein it has been held, as under:

41

“delay in recording the statements of witnesses more so when the said delay is explained, will not aid an accused. Of course, no hard-and- fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it”.

34. In the present case, the investigating officer is not cross examined on the aspect that why there was delay in recording statements of PW2 Karan Chakre and PW3 Sujata Ingle. Moreover, the facts and circumstances on record show that the deceased is close relative of PW2 Karan Chakre and PW3 Sujata Ingle. He was hospitalized, till 30.11.2016. On 30.11.2016, he died. Being the nearest relatives, as PW2 Karan Chakre is grandson and PW3 Sujata Ingle is niece, they may be in a grief and, therefore, they have not approached the police to record

42

statements. As far as their presence at the spot is concerned, it is natural one and there is no reason to discard their evidence. Their presence at the spot is also not declined by the defence.

35. The evidence of PW3 Sujata Ingle is also criticized on the ground that she is a child witness.

36. The evidence of child witness and its credibility would depend upon the facts and circumstances of each case. There is no rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one. The

43

evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon.

37. It is settled principle of law that a child witness can be a competent witness and statement of such witness is reliable, truthful, and is corroborated, then there is no hurdle in accepting the same.

38. Here, in the present case, though PW3 Sujata Ingle is child witness, her evidence is corroborated by other two witnesses and, therefore, there is no reason to discard the evidence of the child witness. As already observed, though they are close relatives, their presence at the spot of the incident is natural one.

44

39. The law is well settled that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy. The material thing which is to be seen whether those inconsistencies go to the root of the matter or pertain to insignificant aspect thereof. If the criminal trial is for such of the truth, the duty of the presiding officer is not merely to see that no innocent person is punished, but also to see that guilty person does not escape. In criminal trial, normally, the evidence of wife

45

and husband, son or daughter of the deceased is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit.

40. Here, in the present case, as observed earlier, presence of PW1 Aniruddha Ingle, PW2 Karan Chakre, and PW3 Sujata Ingle at the spot of the incident is natural as PW2 Karan Chakre is residing along with the deceased and PW1 Aniruddha Ingle and and PW3 Sujata Ingle are residing in neighbourhood and close relatives of the deceased.

41. Thus, there is no reason to discard the evidence merely because there are some inconsistencies in their evidence.

42. It is well settled that the prosecution case cannot be rejected solely on the ground that the independent witnesses have not been examined, but perusal of the

46

evidence on record, the court finds that the case put forth by the prosecution is trustworthy. When the evidence of other witnesses are trustworthy and corroborated to each other, mere fact that the statement was recorded belatedly and independent witnesses are not examined, is not sufficient to discard the evidence of these witnesses. examination of independent witness is not an indispensable requisite if the testimonies of witnesses are trustworthy and reliable. Non-examination of any independent witness by the prosecution will not go to the root of the matter affecting the decision of the court, unless other witnesses' testimonies and evidences are scant to establish the guilt of the accused.

43. For all above reasons, we do not find any reason to discard the evidence of PW1 Aniruddha Ingle; PW2 Karan Chakre, and PW3 Sujata Ingle.

47

44. On going through the evidence of PW3 Sujata Ingle, it is apparent that accused No.2 Pooja Ingle has disclosed the morning incident to accused No.1 Vinod Ingle and, therefore, accused No.1 Vinod Ingle entered into the house of the deceased and the alleged incident has taken place.

45. Learned defence counsel vehemently submitted that the case of the accused persons covers under Exception-1 "Grave and Sudden Provocation." He submitted that there was an incident of assault by the deceased to accused No.2 Pooja Ingle, which was narrated by accused No.2 Pooja Ingle to accused No.1 Vinod Ingle. Admittedly, accused No.1 Vinod Ingle was not present during the morning incident. He came to know about the morning incident at about 1:30 pm when accused No.2 Pooja Ingle disclosed the same.

48

The evidence of PW3 Sujata Ingle further shows that as soon as accused No.1 Vinod Ingle heard the incident took place in the morning from accused No.2 Pooja Ingle, he immediately proceeded towards the house of the deceased and took the “stick” lying at the roof of the deceased and entered into the house of the deceased, which is sufficient to show that as the deceased has assaulted accused No.2 Pooja Ingle, accused No.1 could not control his anger and entered into the house and assaulted the deceased and, therefore, the case of the accused persons covers under Section 304 Part-II of the IPC.

46. Considering the evidence of PW3 Sujata Ingle and the defence taken by the accused persons, it has to be seen, whether the submission of learned counsel for the accused persons, that the case covers under Section 304 Part-II of the IPC, is acceptable or not.

49

47. The “culpable homicide” is defined under Section 299 of the IPC and it is genus. Whereas, the “murder” defined under Section 300 of the IPC and it is specie. Under Section 299 of the IPC, whoever causes death with an intention or knowledge specified in that section, commits offence of “culpable homicide”. However, since “culpable homicide” is only genus, it includes two forms; one is a graver offence which amounts to ‘murder’ and lesser one which does not amount to ‘murder’. It can be seen that, therefore, though the offence of “culpable homicide” is defined, the said provision does not provide any punishment for that offence as such and, for the purpose of punishment, the court has to examine facts and find out whether the offence falls or does not fall under the definition of murder under Section 300 of the IPC. In view of this scheme, therefore, every act of homicide falls within

50

the definition of “culpable homicide” under Section 299 of the IPC.

Section 300 of the IPC on the one hand mentions that a “homicide” is “murder”. However, in that section five exceptions have been given and these exceptions lay down the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the IPC. Therefore, it has to be seen; (1) what was the intention or knowledge with which the act was done and what are circumstances in which it was done, (2) if it is established that the offence is “culpable homicide”, but it does not fall within the definition of murder and if it falls under any of exceptions to that section, the offence is punishable under Section 304 of the IPC. Once, it is held that the offence falls under Section 304 of the IPC, the punishment differs, depending upon whether the death is caused with an

51

intention or only with the knowledge and, therefore, if the element of intention exists, the offence is punishable under Part-I of Section 304 of the IPC, otherwise, the offence falls under Part-II of Section 304 of the IPC.

48. Learned counsel for the accused persons vehemently submitted that the case would fall under Exception-I to Section 300 of the IPC, which is reproduced hereunder for reference:

“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—

(Secondly) - If it is done with the intention

(Thidly) - If it is done with the intention of causing bodily injury

(Fourthly) - If the person committing the act knows

52

Illustrations. (a) A shoots Z with the intention of killing

(b) A, knowing that Z is labouring under such a disease

(c) A intentionally gives Z a sword-cut or club-wound

(d) A without any excuse fires a loaded cannon into a crowd

Exception 1. -- *When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—*

(First) - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly) - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly) – That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact”.

49. The Hon’ble Apex Court right from **K.M. Nanavati vs. State of Maharashtra, reported in AIR 1962 SC 605 onward** held that, “provocation itself is not enough to reduce the crime from murder to culpable homicide not amounting to murder. In order to convert a case of murder to a case of culpable homicide not amounting to murder, provocation must be such that would temporarily deprive the power of self-control of a “reasonable person”. What has also to be seen is the time gap between this alleged provocation and the act of homicide; the kind of weapon used; the number of blows, etc. These are again all questions of facts. There is no standard or test as to what

54

reasonableness should be in these circumstances as this would again be a question of fact to be determined by a Court”.

50. In order to bring the case within Exception-1 to Section 300 of the IPC, following conditions must be complied with:

“(i) The deceased must have given provocation to the accused;

(ii) The provocation must be grave;

(iii) The provocation must be sudden;

(iv) The offender, by reason of the side provocation, shall have been deprived of his power of self-control;

(v) He should have killed the deceased during the continuance of the deprivation of the power of self-control; and

55

(vi) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.”

51. To attract Exception-1 to Section 300 of the IPC, accused must establish that there was a provocation which was both grave and sudden; such provocation had deprived the accused of his power of self-control; and whilst the accused was so deprived of his power of self-control, he had caused the death of the victim.

52. The Hon’ble Apex Court in the case of **Vijay vs. State, represented by the Inspector of Police, MANU/SC/0085/2025** held in paragraph Nos.24, 25, and 26 as under:

“24. In order to bring his case under Exception 1 to Section 300 IPC the following ingredients:

(i) The provocation was sudden; (ii) the provocation was grave; and (iii) loss of self-control. These three ingredients may be considered one by one:

(i) Whether the provocation was sudden or not does not present much difficulty. The word 'sudden' involves two elements. First, the provocation must be unexpected. If an accused plans in advance to receive a provocation in order to justify the subsequent homicide, the provocation cannot be said to be sudden. Secondly, the interval between the provocation and the homicide should be brief. If the man giving the provocation is killed within a minute after the provocation, it is a case of sudden provocation. If the man is killed six hours after the provocation, it is not a case of sudden provocation.

(ii) the main difficulty lies in deciding whether a certain provocation was grave or

57

not. A bare statement by the accused that he regarded the provocation as grave will not be accepted by the court. The court has to apply an objective test for deciding whether the provocation was grave or not. A good test for deciding whether a certain provocation was grave or not is this: "Is a reasonable man likely to lose self-control as a result of such provocation?" If the answer is in the affirmative, the provocation will be classed as grave. If the answer is in the negative, the provocation is not grave. In this context, the expression 'reasonable man' means a normal or an average person. A reasonable man is not the ideal man or the perfect being. A normal man sometimes loses temper. There is, therefore no inconsistency in saying that, a reasonable man may lose self-control as a result of grave provocation. A reasonable or normal or average man is a legal fiction. The reasonable man will vary from society to society. A Judge should not impose his personal standards in this matter. By training,

58

a Judge is a patient man. But the reasonable man or the normal man need not have the same standard of behaviour as the judge himself. The reasonable man under consideration is a member of the society, in which the accused was living. So, education and social conditions of the accused are relevant factors. An ordinary exchange of abuse is a matter of common occurrence. A reasonable man does not lose self-control merely on account of an ordinary exchange of abuses. So, courts do not treat an ordinary exchange of abuses as a basis for grave provocation. On the other hand, in most societies, adultery is looked upon as a very serious matter. So, courts are prepared to treat adultery as a basis for grave provocation.

(iii) the question of loss of self-control comes up indirectly in deciding whether a particular provocation was grave or not. So, if it is proved that the accused did receive grave

59

and sudden provocation, the court is generally prepared to assume that homicide was committed while the accused was deprived of the power of self-control. In some cases, it may be possible for the prosecution to prove that the accused committed the murder with a cool head in spite of grave provocation. But such cases will be rare. So, when the accused has established grave and sudden provocation, the court will generally hold that he has discharged the burden that lay upon him under Exception 1 to Section 300 IPC”.

25. What should be the approach of the court? The provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but one of ordinary sense and calmness. The Court has to consider whether a reasonable person placed in the same position as accused would have behaved in the manner in which the accused behaved on receiving the same provocation.

60

If it appears that the action of the accused was out of all proportion to the gravity or magnitude of the provocation offered, the case will not fall under the exception. The case can only fall under the exception when the court is able to hold that provided the alleged provocation is given, every normal person would behave or act in the same way as the accused in the circumstances in which the accused was placed, acted.

26. In the words of Viscount Simon: "The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negatived. Consequently, where the provocation inspires and actual intention to kill, or to inflict grievous bodily harm the doctrine that provocation may reduce murder to manslaughter seldom applies".

61

53. In view of Section 105 of the IPC, burden of proof castes on accused. Being an exception, burden of proving the circumstances covered by Exception-1 is on the accused. Where the prosecution *prima facie* proves that the act was committed by the accused which had resulted in the death of the deceased and the accused pleads that the case falls within one of the exceptions, it is for him to prove that. It is for accused who seeks to reduce the nature of his crime by bringing his case under Exception-1, to prove that the provocation received by him was such as might reasonably be deemed sufficient to deprive him of self- control, and that the act of killing took place whilst that absence of control was in existence and may fairly be attributed to it.

54. Thus, to bring the case within the ambit of “culpable homicide not amounting to murder”, it could have invoked on the basis of evidence.

62

55. As far as the present case is concerned, the evidence of PW3 Sujata Ingle shows that there was a communication between accused No.1 Vinod Ingle and accused No.2 Pooja Ingle. Accused No.2 Pooja Ingle has disclosed the incident to accused No.1 Vinod Ingle that the deceased has assaulted her. This fact is further corroborated by N.C.Report lodged by accused No.2 Pooja Ingle. As soon as accused No.2 Pooja Ingle has disclosed the said incident of the assault at the hands of the deceased to accused No.2 Pooja Ingle, accused No.1 Vinod Ingle lost his self-control and he was deprived of power of self-control and went into the house of the deceased and assaulted the deceased and caused death of the deceased.

56. Thus, the evidence on record shows that what actually provoked accused No.1 Vinod Ingle is that, the deceased has assaulted his wife accused No.2 Pooja Ingle and, therefore, he lost his self-control and, therefore, the

63

contention of learned counsel for the accused persons, that the case would cover under Exception-1 to Section 300 of the IPC “Grave and Sudden Provocation,” is acceptable.

57. Whether the offence is “culpable homicide” or “murder”, the Hon’ble Apex Court in the case of **Ajmal vs. State of Kerala**, reported in (2022)9 SCC 766 has held that, “the academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of sections 299 and 300”.

64

It has been further held that, “the court should proceed to decide the pivotal question of intention with care and caution so that will decide whether the case falls under Section 302 or under Section 304 Part-I or Part-II of the Indian Penal Code. Many petty or insignificant matters plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the Accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into

65

offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302 of the Indian Penal Code”.

58. The Hon’ble Apex Court further held that “the intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the Accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause

66

for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the Accused dealt a single blow or several blows. The above list of circumstance is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention”.

59. By applying these principles, the facts of the present case show that the weapon “stick” was taken by accused No.1 Vinod Ingle lying under roof of the house of the deceased. The evidence on record further shows that nature of the weapon was not coming under the category of “dangerous weapon.” The said weapon “stick” was also not brought by accused No.1 Vinod Ingle, but it was lying at the spot and he picked up from the spot. During the scuffle, a blow is received by the deceased on his head. There are no

67

repeated blows by accused No.1 Vinod Ingle while causing the injuries. The act was due to the “Grave and Sudden Provocation.” There was no pre-mediation on the part of accused No.1 Vinod Ingle. There was previous enmity and due to the “Grave and Sudden Provocation,” the incident has taken place and in a hit of passion, the injury was caused to the deceased. Accused No.1 Vinod Ingle has dealt a single blow on the person of the deceased.

60. The above said circumstances, sufficiently show that there was no intention to cause the death of the deceased, but there was a knowledge to accused No.1 Vinod Ingle that his act may cause death of the deceased.

61. Admittedly, in the present case, the quarrel took place on a simple reason that the deceased has allegedly assaulted accused No.2 Pooja Ingle and, therefore, accused No.1 Vinod Ingle entered into the house of the deceased and

68

gave the blow. The act of accused No.1 Vinod Ingle was not pre-mediated. The weapon used by him is also lying on the spot.

62. From the above all circumstances, irresistible conclusion can be drawn is that accused No.1 Vinod Ingle was not having any intention to cause death of the deceased, but he was having knowledge that this act may cause the death of the deceased and, therefore, the act of accused No.1 Vinod Ingle falls under Section 304 Part-II of the IPC.

63. As far as the role of accused No.2 Pooja Ingle is concerned, there is no evidence on record to show that she was sharing a “common intention” with accused No.1 Vinod Ingle.

64. Word "in furtherance" indicates existence of aid or assistance in producing an effect in future and thus, it has to be construed as an advancement or promotion.

65. The Hon'ble Apex Court, in the case of **Jasdeep Singh @ Jassu vs. State of Punjab, reported in (2022)2 SCC 545**, interpreted word "furtherance" and held as under:

"..... Word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyze and assess the evidence before implicating a person under Section 34 of the IPC. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common

70

intention to the satisfaction of the court. The evidence should be substantial, concrete, definite and clear”.

66. By applying the aforesaid principles to the facts of the present case in hand, it shows that accused No.2 Pooja Ingle has disclosed the incident to accused No.1 Vinod Ingle and, thereafter, accused No.1 Vinod Ingle, immediately, entered into the house of the deceased. However, as per the evidence of PW3 Sujata Ingle, accused No.2 Pooja Ingle came at the spot of the incident, subsequently. Therefore, there is no evidence on record to show that accused No.1 Vinod Ingle and accused No.2 Pooja Ingle were sharing “common intention” to cause the death of the deceased.

Therefore, the conviction of accused No.2 Pooja Ingle under Section 302 read with 34 of the IPC, to whom no overt act is attributed and there is no evidence to show

71

that she was sharing “common intention,” requires to be quashed and set aside.

67. Insofar as the offence under Section 452 read with 34 of the IPC against accused No.1 Vinod Ingle and accused No.2 Pooja Ingle is concerned, i.e. “house-trespass”, is proved against both of them. Accused No.1 Vinod Ingle and accused No.2 Pooja Ingle have committed “house-trespass” for causing hurt to the deceased and, therefore, the offence under Section 452 read with 34 of the IPC is made out against them and, therefore, the conviction against both the accused persons requires to be maintained.

68. Learned Judge of the trial court, while considering the evidence adduced, has not taken into consideration the aspect that the alleged incident has occurred due to the conflict between the deceased and accused No.2 Pooja Ingle on account of throwing garbage in

72

the courtyard of the house of the deceased. The deceased has allegedly assaulted accused No.2 Pooja Ingle in absence of accused No.1 Vinod Ingle, which provoked accused No.1 Vinod Ingle to enter into the house of deceased and the alleged incident has taken place.

69. As observed earlier, the death of the deceased is caused due to the provocation and the case of accused No.1 Vinod Ingle covers under Exception-1 and, therefore, accused No.1 Vinod Ingle is held guilty for the offence punishable under Section 304 Part-II of the IPC and sentenced to undergo rigorous imprisonment for 10 years. The fine amount is maintained. The default sentence is also maintained. Therefore, the sentence of accused No.1 Vinod Ingle deserves to be modified.

Accused No.2 Pooja Ingle is acquitted of offence under Section 302 read with 34 of the IPC.

73

The conviction and sentence under Section 452 read with 34 of the IPC imposed upon accused No.1 Vinod Ingle and accused No.2 Pooja Ingle is hereby maintained.

70. In this view of the matter, we proceed to pass following order:

ORDER

(1) The Criminal Appeal is **Partly Allowed**.

(2) The judgment and order dated 17.5.2018 passed by learned Sessions Judge, Akola in Sessions Trial No.96/2017 is modified.

(3) Accused No.1 Vinod Shashikant Ingle is held guilty for the offence punishable under Section 304 Part-II of the IPC and sentenced to undergo rigorous imprisonment for 10 years and pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for three months.

74

(4) Accused No.2 Pooja Ingle is acquitted of offence punishable under Section 302 read with 34 of the IPC.

(5) Accused No.1 Vinod Shashikant Ingle and accused No.2 Pooja Ingle are held guilty for the offence punishable under Section 452 read with 34 of the IPC and sentenced to undergo rigorous imprisonment for two years each and pay fine Rs.1000/-, in default, to undergo rigorous imprisonment for further period of one month each.

(6) Accused No.1 Vinod Shashikant Ingle and accused No.2 Pooja Ingle are entitled for set-off under 428 of the CrPC.

(7) The accused No.2 has already undergone 04 years and 26 days i.e. from 20.05.2018 to 17.02.2022, therefore, she be released forthwith, if not required in any other crime.

(8) The accused No.1 as per the communication dated 15.12.2025 received from the Deputy Superintendent of Amravati Prison has undergone 11 years 01 month and 25

75

days till 30.11.2025 i.e. from 20.05.2018 to 30.11.2025, therefore, he be released forthwith, if not required in any other crime.

(9) The bail bonds of accused No.1 Vinod Shashikant Ingle and accused No. 2 Pooja Vinod Ingle stand discharged.

(10) The R&P be sent back to the trial court.

Appeal stands **disposed of** accordingly.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!