



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

CRIMINAL APPEAL NO.476/2020

Rameshwar Shamraoji Panchgade,
aged 55 years, Occ. Labourer,
r/o Dattawadi, Arvi, Tq. Arvi,
Dist. Wardha.

.....APPELLANT

...V E R S U S...

The State of Maharashtra,
through Police Station Officer,
Police Station, Arvi, Dist. Wardha.

...RESPONDENT

WITH
CRIMINAL APPEAL NO.437/2020

Sau. Nirmala w/o Rameshwar Panchgade,
aged 49 years, Occ. Labourer,
r/o Dattawadi, Arvi, Tq. Arvi,
Dist. Wardha.

.....APPELLANT

...V E R S U S...

The State of Maharashtra,
through Police Station Officer,
Police Station, Arvi, Dist. Wardha.

...RESPONDENT

Mr. R. M. Daga, Advocate for appellant in Appeal No. 476/2020.
Mr. M. V. Rai, Advocate for appellant in Appeal No.437/2020.
Mr. A. B. Badar, A.P.P. for respondent-State.

CORAM:- ANIL L. PANSARE AND Y. G. KHOBRAGADE, JJ.

DATE OF RESERVING THE JUDGMENT : **09.10.2025**

DATE OF PRONOUNCING THE JUDGMENT : **16.10.2025**

ORAL JUDGMENT (Per: Anil L. Pansare, J.)

The appellants have challenged judgment and order dated
23.10.2020 passed by learned Additional Sessions Judge, Wardha, in
Sessions Case No.57/2016. The appellant in Criminal Appeal No.

476/2020 was accused No.1 before the Trial Court and appellant in Criminal Appeal No. 437/2020 was accused No.2. They will be hereinafter referred to as per their original nomenclature.

2. Thus, by the impugned judgment, accused No.1 has been convicted for the offence punishable under Section 302 of the Indian Penal Code 1860 ("IPC"). He is sentenced to suffer rigorous imprisonment for life and with fine of Rs.2000/-. Accused No.2 has been convicted for the offence punishable under section 324 of the IPC and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1000/- As such, the accused were tried for the offences punishable under sections 302, 307, 324, 504 read with Section 34 of the IPC. However, the Trial Court has rendered the above finding. The respondent - State of Maharashtra has not preferred appeal against the acquittal of accused No.2 for the offence punishable under Section 302 of the IPC and accordingly the appeals were heard.

3. Briefly stated the facts are;

Accused No.1 is elder brother of informant's husband named Raju. Accused No.2 is wife of accused No.1. Accused No.2 used to raise quarrels with informant by raising suspicion over her husband i.e. accused No.1 that he provides money to the informant. Moreover, there was dispute between accused No.1 and informant's husband on

the count of partition of house and drainage of water, for which report was also lodged with Police Station.

4. On 17.03.2016 at about 07:00 p.m., when the informant came from market, her husband told her that accused No.1 and 2, took up a quarrel with him when he had gone to clear the drainage. Thereafter, when the informant, her husband and their son were in their house, accused No.1 and 2, were uttering abuses. Accused No.1 asked her husband to come out. The informant's husband went outside. Altercations took place between them. On hearing a call from her husband, informant also came out. At that time, she found chilly powder in the eyes of her husband, which was supposedly thrown by Pratik, the juvenile son of accused No.1 and 2. The informant's husband was washing his eyes. At that time, Pankaj, another juvenile son of accused No.1, caught his neck, accused No.2 assaulted the informant's husband by giving stick blows, whereas accused No.1 assaulted by means of axe on his head and back. The assault caused bleeding injuries on his head and he fell down on the ground. Accused No.1 also dealt a blow of axe on the informant's head when she came to rescue her husband. She somehow escaped the grave injury but sustained injury on her forehead. The informant's son Sameer came for their rescue. He was also caught by Pratik and accused No.2 assaulted Sameer by giving blows of stick on his back. All the accused thereafter

fled away from the spot. The informant was referred to hospital for treatment. She came to know that her husband succumbed to the injuries. The informant accordingly lodged First Information Report (“FIR”) at Police Station Arvi on 18.03.2016, vide Crime No.311/2016 for the offences punishable under Sections 302, 307, 303, 506 read with Section 34 of the IPC.

5. This is how the law was set in motion. The investigating officer took up the investigation. He prepared spot panchanama, conducted inquest panchanama, seized clothes of deceased, blood samples and nail clippings, etc. were also seized. Postmortem was conducted. The axe was discovered at the instance of accused No.1. The blood stained clothes of accused were also seized under section 27 of the Indian Evidence Act, 1872. Blood samples of the juvenile in conflict with law were also obtained and seized under panchanama. Statements of witnesses were recorded. The weapon stick was seized, Forensic Sciences Laboratory’s report was obtained and on completion of the investigation, charge-sheet was filed.

6. The Trial Court framed charges, to which the accused pleaded not guilty. The prosecution examined 15 witnesses to bring home the guilt of the accused. Statement under Section 313 of the Criminal Procedure Code, 1973 (“Code”) was recorded. The defence of

the accused was of total denial and false implication. Trial Court, after having heard both sides and after having gone through the evidence and documents placed before it, found accused No.1 guilty of the offences punishable under Section 302 of the IPC, whereas accused No.2 was found guilty for the offence punishable under Section 324 of the IPC. Both accused, aggrieved by the finding, filed present appeals.

7. We have heard Mr. R.M. Daga, learned counsel for accused No.1, Mr. M. V. Rai, learned counsel for accused No.2 and Mr. A. B. Badar, learned A.P.P. for the State of Maharashtra. We have gone through the impugned judgment, evidence, documents and other materials placed before us. We will refer to the same to the extent necessary to decide the following points that arise for our consideration. We have recorded our findings thereon for the reasons to follow.

Sr.No	Points	Findings
1.	Whether the prosecution has proved that Raju Panchgade suffered homicidal death?	In the affirmative.
2.	Whether the prosecution has proved that on 17.03.2016, accused No.1 committed murder of Raju?	In the affirmative.
3.	Whether the prosecution has proved that on 17.03.2016, accused No.2 voluntarily caused hurt to Sameer, son of Raju and also informant by means of stick used as a weapon of the offence, likely to cause death?	In the affirmative.
4.	Whether interference is called for in the impugned judgment?	In the Negative.
5.	What order?	The appeal is dismissed.

REASONS

As to point Nos. 1 to 4:

8. These points are interlinked, therefore, they are decided by common reasoning. The prosecution was under an obligation to prove that Raju suffered homicidal death and that accused No.1 is responsible for the said death. The prosecution was also under obligation to prove that accused No.2 caused voluntary hurt to Pranita and Sameer.

9. The prosecution case mainly revolves around testimony of three witnesses namely, PW1, the informant, PW5 Sameer who has sustained injuries in the incident and PW6 Ratnabai, the neighbour who had witnessed the incident. We have gone through the evidence of all these witnesses.

10. PW1 deposed in tune with the FIR. As per her evidence, on 17.03.2025, at around 07:00 p.m., there occurred quarrel between her husband on one side and accused persons on the other. Thereafter, accused came out from their house and were abusing. Accused No.2 called her husband out of the house. Accordingly, her husband went out. Prateek threw chilly powder into the eyes of Raju, accused No.2 assaulted him with stick, accused No.1 assaulted by axe on his head as also back. Accused No.1 assaulted the informant on her forehead by means of axe. Sameer intervened in the quarrel. Accused No.2 Nirmala beat Sameer on his back by means of stick. Thereafter, accused ran

away. Police admitted the informant to the Government Hospital because of bleeding injury on her head. Her son Aniket came to hospital and informed her that her husband succumbed to the injuries. FIR was lodged. In the cross-examination, a case is put up to show that her husband had criminal antecedents and that she gave a threat to the accused of implicating them because of relations between her and the accused. She admitted that relations between them were not good. However, rest of the suggestions were denied. There is nothing in the cross-examination on the point of incident. In other words, her testimony withstood the cross examination and thus is reliable.

11. PW5 is another witness and a victim of the crime. His evidence is nothing but reiteration of what PW1 has stated. The only addition is that he made a phone call to his brother Aniket who came to house and took his father to hospital where the doctors declared him dead. In the cross-examination, he admitted that the relations between the two families were not good. He stated that quarrel took place between his father and accused No.1 even prior to the incident.

12. Thus, it is brought on the record in the cross-examination of PW5 that relations between the two families were not good and that both the brothers indulged into quarrels on earlier occasions also. Thus, the motive behind the crime is substantiated in the cross examination.

13. The third witness is equally important. She is neighbour and an independent witness. According to her, the incident occurred in front of the house of the deceased Raju between 07:00 and 07:30 p.m. on 17.03.2016. Her house is adjacent to the house of deceased and the accused. She was sitting in front of her house. A quarrel took place between Raju and accused No.1 over drainage. Thereafter, the quarrel came to an end. At about 08:00 p.m. she heard abuses. So she came out of the house. She saw Pratik throwing chilly powder in the eyes of Raju. Accused No.2 brought a stick and an axe. She gave axe to accused No.1, who gave the axe blow on the head and back of Raju. Accused No.2 came running towards the witness with stick and, therefore, she ran away and hid herself under a tree. Later on, she came to know that Raju had expired. Her statement was recorded by police so also before Magistrate (Exh.65). In the cross-examination, her evidence that incident took place between 07:00 and 07:30 p.m. and also around 08:00 p.m. is shown as an omission which is proved through the evidence of the investigating officer. Except for such an omission, there is absolutely nothing in her cross-examination to disbelieve the prosecution's version.

14. Thus, the testimony of these three witnesses will clearly spell out the role played by the respective accused.

15. Mr. Daga, learned Counsel for accused No.1 initially made

an attempt to point out flaws in the prosecution story. However, later on focused his argument on the point of ingredients of section 304 Part II of the IPC. According to him, evidence of PW6 indicates that accused No.1 came out of his house without carrying arms. During scuffle, accused No.2 provided axe to accused No.1 and in the heat of moment, the incident occurred. Accordingly, he argued that since accused No.1 was unarmed, the intention was never to commit murder of his own brother.

16. Thus, the moot question in the appeal is, whether accused No.1 has committed a murder or is a case of culpable homicide not amounting to murder. Mr Daga invited our attention to exception 4 to Section 300 of the IPC which provides that 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's having taken undue advantage or acted in a cruel or unusual manner.

17. Thus, to fall under exception 4, following four ingredients will be necessary:

- (i) Homicide is committed without premeditation.
- (ii) In a sudden fight in a heat of passion upon sudden quarrel.
- (iii) Without taking undue advantage.
- (iv) Without acting in a cruel or unusual manner.

18. Mr. Daga submits that there is nothing in the evidence to show that accused No.1 has committed crime with premeditation. According to him, there occurred usual quarrel and that since both the brothers indulged into scuffle, which provoked accused No.1 for aggravated assault, resulted into death of his own brother. He further submits that though prosecution witnesses have spelt out two quarrels, the manner in which the events have been narrated, it can be gathered that the second incident is an integral part of the first incident. In other words, Mr. Daga submits that the second incident is continuation of the first incident and it cannot be separated.

19. In support, he relied upon judgment of the Supreme Court in the case of Atul Thakur Vs. State of H.P. [(2018) 7 SCC 49] and Surain Singh Vs. State of Punjab [(2017) 5 SCC 796], wherein the Court held that neither the factum of use of knife nor multiple stabs were given by the appellant therein, can be the sole basis to deny benefit of exception 4 to Section 300 of the IPC and that number of wounds caused is not a decisive factor. What is important is that occurrence must be a sudden without premeditation and the offender must have acted in a heat of anger.

20. Mr. Daga has also relied upon judgment of the Supreme Court in the case of Nandlal Vs. State of Maharashtra [(2019) 5 SCC 224] wherein the Court held that an act committed in a sudden heat of

passion during a sudden quarrel, without premeditation or cruelty, can be considered under an exception to murder, thereby reducing the charge to culpable homicide not amounting to murder. The Court emphasized that the absence of prior intention, the spontaneous nature of the altercation and the lack of undue advantage or cruelty in inflicting the fatal injury are crucial factors in qualifying the act for this exception.

21. Mr. Daga submits that the facts in the present case, would demonstrate that the nature of offence if tested in the light of judgment cited above, the offence can be scaled down to an offence under Section 304 part II of the IPC.

22. Mr. Badar, learned A.P.P. for the respondent-State, on the other hand, submits that the evidence of the prosecution witnesses, particularly PW6, would clearly demonstrate that the second quarrel is an act done by both accused with premeditation. He submits that PW6 categorically deposed that she witnessed the first quarrel which came to an end. Thereafter, she heard abuses and accordingly she came out, which would mean that after concluding the first quarrel, PW6 went inside the house. She came out only upon hearing the second quarrel. In the second quarrel, the accused along with their children came out with arms and as such with common intention to attack deceased Raju. It is a different matter that accused No.1 was not holding axe in his

hand. However, the body parts, which he chose to inflict the injuries upon his own brother, is something that would demonstrate his intentions to commit murder. He has targeted most vital parts of Raju's body i.e. head and back. The co-accused also assaulted Raju. He further submits that there is history of previous quarrels between the two families. In the circumstances, the second attack by accused No.1 with co-accused is nothing but a well planned crime.

23. In support of his contentions, Mr. Badar has relied upon judgment of the Madhya Pradesh High Court in *Sonu Jain Vs. State of Madhya Pradesh [Criminal Appeal No.474/2016]* wherein, in the identical set of facts, the High Court declined to convert the offence under Section 302 of the IPC to Section 304 Part II of the IPC. In the said case also, after initial quarrel, the appellant therein returned back after about 25-30 minutes and assaulted the victim by knife delivering a single lethal blow to the right side of the chest. The High Court reaffirmed the well established doctrine of provocation. The Court held that the exceptions to Section 300 of the IPC, particularly exceptions 1 and 4 would require a factual scenario of grave and sudden provocation that temporarily deprived the accused of control, coupled with detrimental and immediate reaction. Mere presence of an altercation or a single blow is not automatically sufficient to invoke exceptions 1 and 4. The interval between provocation and the act, the nature of weapon used and the relation of the act to the provocation are critical.

Thereafter, the High Court, considering the facts of the case before it held that there is no sudden altercation and further deliberate return with a deadly weapon after a gap is a fact that can support the finding of intention to kill. The Court then held that the knife used in the crime was a deadly weapon and the injury to the vital part was inflicted after a gap of about 25 to 30 minutes, following earlier quarrel, will indicate the calculated design to cause death. Consequently, the Court declined to convert the offence to section 304 part II of the IPC.

24. We find merit in the submissions made by Mr. Badar. In the case before us, there is a history of quarrels between the families. The defence itself has brought on record in the cross-examination of prosecution witnesses that the relations between the two families were not good and that both the brothers had quarrels on earlier occasions as well. The evidence of PW1, PW5 and PW6 further indicate that initial quarrel was stopped and thereafter the accused persons returned back with deadly weapons. Accused No.1 came out of his house with co-accused and called Raju and once he came out, there was a collective assault by family of accused No.1. The testimony of PW6 that first quarrel came to an end and after sometime the second quarrel occurred, where the accused persons came with weapons, is a clinching evidence of premeditation. Further, the assault by axe, which is a deadly weapon on the vital body parts chosen by accused No.1 to inflict fatal injury, is yet another instance to substantiate the prosecution

version that the assault was with an intention to commit murder. The evidence that the son of accused No.1 caught hold of Raju's hands, indicate that he was rendered defenseless and, therefore, there is nothing to show that Raju provoked accused Nos. 1 and 2 to commit the offence. This is one more reason to reject the argument of accused No.1 that incident occurred in heat of moment.

25. The overall look at the incident does not really suggest that the accused No.1 or for that purpose co-accused were suddenly provoked by Raju or his family members that they were temporarily deprived of the self control. Further, the reaction was not immediate, but is a well thought action. That being so, argument of accused No.1 that the offence could be scaled down to Section 304 part II of the IPC, is without any substance and is accordingly rejected.

26. Since Mr. Daga, has, in a way restricted his arguments to scale down the offence, we do not feel it necessary to discuss in detail the evidence of other witnesses which have hardly any impact on the judgment. PW2 is pancha to inquest, PW3 is Revenue Inspector who drew the map of spot, PW4 is pancha to seizure of muddemal, PW7 is pancha who handed over muddemal to the Court, PW8 is pancha to discovery of weapon under Section 27 as also seizure of clothes of accused, PW9 is the one who carried muddemal to Chemical Analyzer, PW10 is pancha to spot panchanama, inquest panchanama and seizure

memo, PW11 is photographer who clicked the photographs of seizure, PW12 is also photographer to seizure of articles, PW13 is doctor who issued certification of examination of injuries, PW14 is doctor who conducted postmortem, PW15 is investigating officer who supported the case of prosecution.

27. So far as the role of accused No.2 is concerned, Mr. Rai learned counsel submits that the Trial Court has rendered a categorical finding that she has used stick to assault the lower back, right shoulder, and right hand of Raju. Accordingly, the Trial Court held her guilty for the offence punishable under Section 324 of IPC.

28. Mr. Rai submits that in such a scenario, the stick or Lathi cannot be termed as a dangerous weapon. He has invited our attention to section 324 of the IPC to contend that the weapons described under this provision are such that are capable of causing death by its use. The weapons described are instruments for shooting, stabbing or cutting or any instrument which if used as a weapon of an offence which is likely to cause death or cause voluntary hurt, by means of fire or any heated substance or by means of poison, etc. Thus, according to him, to attract section 324 of the IPC, the weapon used should be of the nature as described in the provision. In the present case, stick was used which cannot be said to be a deadly weapon.

29. In support he invited our attention to the judgment of the Madhya Pradesh High Court in the case of Anusuiya Daharwa Vs. Govind Ram alias Tappu Kadve and Ors. [2017 CR.L.J.3140], wherein the Court held that the classification of a weapon as a dangerous weapon under the relevant Section of the IPC depends on its nature, characteristic and the potential to cause death or grievous hurt. The Court further held that merely because of hard and blunt nature of the object, Lathi or stick does not automatically qualify it to be a dangerous weapon unless it possesses the enhanced capacity of causing death or grievous hurt. In the said case, Bamboo stick was used. The High Court held that it was capable of causing grievous hurt but did not meet the criteria to consider it as a dangerous weapon. Accordingly, the conviction rendered under section 326 of the IPC was altered to Section 325 of the IPC.

30. We would endorse the view taken by the Madhya Pradesh High Court as regards categorization of the weapon. According to us, the Bamboo stick can be termed as a deadly weapon if the assailant has targeted the vital parts of the victim for the assault by the stick, like if the stick is used to inflict injury on head or other vital parts of the body even single blow can be fatal. In such an eventuality, the bamboo stick or Lathi can be said to be a deadly weapon.

31. In the present case, the role of accused No.2 was very

crucial. In fact, she came out with two weapons. One is axe and another is a stick. She supplied axe to accused No.1, who gave a fatal blow on the head of Raju. In the process of assault by accused No.1, his wife, accused No.2 assaulted Raju by stick on his back shoulder and hand. In addition, she has also assaulted PW1 and PW5. She rushed towards PW6 and threatened her as well. Her overall contribution would, as such, attract higher punishment, the Trial Court, however, for no valid reason ignored her role while assessing the evidence in the light of Section 34 of the IPC.

32. In our view, the common object of the accused was writ large in the present case. However, since the Trial Court has found accused No.2 guilty of offence punishable under Section 324 of the IPC and that since the State Government has not challenged the said verdict, we refrain from making any further comments. The role of accused No.2 is such that would definitely attract ingredients of Section 324 of the IPC, if not 302 of the IPC. As stated earlier, she came out with two weapons that itself indicates her intention to lodge fatal attack. In the circumstances, the body parts chosen by her to assault Raju can be said to be vital parts and thus the Lathi/stick used by accused No.2 can be treated as a deadly weapon.

33. The aforesaid evidence, coupled with postmortem report, show five serious injuries on the person of the deceased. The cause of

death was brain hemorrhage due to hard and blunt object. This evidence is sufficient to hold that Raju suffered homicidal death and that accused No.1 is responsible for the said death. The evidence also indicates that accused No.2 had played a vital role in the crime and is thus, guilty of offence of causing voluntary hurt by deadly weapon, if not abetting the crime under Section 302 of the IPC. Point Nos.1 to 4 are answered accordingly.

As to Point No.5:

34. Having answered first four points in the manner hereinabove, no interference is called for in the impugned judgment. There is thus no substance in the appeals. The appeals are accordingly dismissed. Bail bond of accused No.2 - Sau. Nirmala w/o Rameshwar Panchgade, stands cancelled. She shall surrender before the Sessions Court, Wardha for undergoing the imprisonment within three weeks from today, failing which the Sessions Court shall take appropriate steps to arrest her for undergoing the sentence.

(Y. G. Khobragade,J.)

(Anil L. Pansare, J.)

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