

# **SUPREME COURT OF INDIA**

Pandurang Punappa Karpe

Vs.

State of Maharashtra

(G.B.Pattanaik and N.Santosh Hegde JJ.)

07.09.1999

## **ORDER**

1. The appellant alone has been convicted under Section 302 IPC for having caused the murder of deceased Aka Ram by giving a blow by means of an axe on the chest. Though along with Appellant 5 other accused persons stood charged and tried but the learned Sessions Judge acquitted 3 of them, namely, Accused 2, 5 and 6. In the appeal, the High Court has acquitted Accused 3 and 4 but relying upon the sole testimony of the wife of the deceased PW 4, convicted the appellant of the charge under Section 302 and sentenced him to imprisonment for life. Though Mr Deshpande argued at length contending, inter alia, that the major part of the prosecution having been disbelieved and participation of as many as 5 accused persons has been disbelieved there is no grain in the evidence of PW 4 which can form the basis of conviction and therefore the conviction of the appellant is unsustainable. But on scrutinizing the evidence of PW 4 we are not in a position to accept the said submission of the learned counsel. So far as the assault on the deceased by the accused-appellant is concerned, the evidence remains unchallenged and on the other hand it gets corroboration from the evidence of the doctor who conducted the post-mortem examination. The learned counsel then urged that even if the prosecution has been able to establish that the appellant gave a blow by means of an axe on the chest

of the deceased, the evidence of PW 4 will unhesitatingly point out that the accused never came with the intention of killing the deceased, though ultimately on account of certain hot exchange of words between the deceased and the accused, the accused who had with an axe given a blow which accidentally fell on the chest and therefore the conviction will not be one under Section 302 but one under Section 304 IPC. The learned counsel appearing for the state, on the other hand, contended that looking at the severity of the blow, the situs of the body of the deceased when the blow was given, the fact that the accused had come all the way with an axe in his hand conclusively indicates the intention, the same being to cause the murder, and thus the offence is under Section 302 IPC. To appreciate the correctness of rival submissions we have examined the evidence of PW 4. Her evidence categorically indicates that there was some quarrel between the son of the deceased and the accused persons sometime prior to the occurrence and the son had come back home. Then the accused persons came to the front of the house of the deceased and started abusing the wife of the deceased, she protested, thereupon the deceased himself came forward and asked the accused persons to go to the house and abuse but should not abuse in front of the house of the deceased. This intervention by the deceased and altercation, ultimately enraged the appellant who gave one blow with the weapon which he was holding in his hand, namely, the axe and ultimately the deceased succumbed to the injury sustained by the said weapon. The very fact that the accused persons came to the place in front of the house of the deceased and did not enter in to the house or assaulted the deceased or any family members though they had the respective weapon in the hand and merely abused the wife of the deceased but later on, on account of intervention of the deceased there was some hot exchange of words and ultimately the appellant gave the blow in question, is indicative of the fact that the appellant never gave the blow with the intention of causing murder of the deceased so as to bring the offence under Section 302. On the other hand, the appellant must be held to have known the consequences of the blow being given and since it was a single blow the offence would be one under Part I under Section 304 IPC. We, accordingly, set aside the conviction of the appellant under Section 302 and instead convict him under Section 304 Part I and sentence him to undergo rigorous imprisonment for 10 years.

2. The appeal is disposed of accordingly.