

SUPREME COURT OF INDIA

Shankar Diwal Wadu

Vs.

State of Maharashtra

Crl.A.No.402 of 2007

(S.B.Sinha and Markandeya Katju, JJ.)

21.03.2007

JUDGMENT

Markandey Katju, J.

SLP (Crl)No.6240 of 2006)

1. Leave granted.
2. This appeal is directed against the judgment and order dated 24.9.2004 of the Bombay High Court in Criminal Appeal No. 631 of 2000.
3. The prosecution version is that the accused Shankar Wadu is the brother of Mahu Wadu who was assaulted by him, which assault resulted in his death. The incident occurred around 8.P.M. on 22.10.1995 at Kainad Wadu Pada, Laluka Wada, District Thane, where both the accused and the victim were residing along with other close relations. According to the prosecution case, the accused wanted to keep Kamlibai, the widow of his brother Vasant, as his mistress, but she refused to be his mistress. On the day of the incident the appellant was forcibly trying to drag Kamlibai to his house. At that very time, he was told by his brother Mahu (the deceased) that he could not force and drag Kamlibai to his house. At this intervention, the accused got enraged by such unwarranted advice and therefore lifted a wooden plank (pat) and hit Mahu with it on his head, and also kicked and punched him. Mahu died on the spot. Complaint of this assault was lodged by one Yeshubai who is closely related to both the accused and the victim. On receipt of this report the investigation was conducted and the accused was arrested. The prosecution examined as many as eight witnesses to prove its charge of murder against the accused and the learned trial Judge on appreciation of the evidence came to the conclusion of guilt and convicted the accused and sentenced him to life imprisonment under Sections 302/506 Indian Penal Code, 1860 and also imposed a fine.
4. Against the judgment of the trial court, the appellant filed an appeal before the High Court

which has been dismissed by the impugned judgment and hence this appeal by way of special leave.

5. We have gone through the record and we agree with the view taken by the courts below that the appellant is guilty. There are eye witnesses of the incident and we see no reason to disbelieve their testimony. These eye witnesses also include Kamlibai (PW4). The allegation of the prosecution that it was because of Kamlibai that the incident occurred is proved by Kamlibai herself who is corroborated in all material particulars by PW-1 and PW-2. PW-3 Yesubai is also an eye witness and we see no reason to disbelieve her evidence. The medical evidence corroborates the prosecution case. The post mortem report shows a fracture on the scalp of the deceased caused by a hard and blunt object, and according to the doctor this was sufficient to cause death. Both the courts below have carefully considered the evidence on record and we see no reason to take a different view.

6. However, we are of the opinion that the case comes under Section 304/Part 2 and not under Section 302 Indian Penal Code, 1860 since the incident occurred in a sudden fit of anger. The decisions cited by learned counsel for the appellant vide *Pappu vs. State of M.P.*¹ and *Sukhbir Singh vs. State of Haryana*² are apposite to this case.

7. Hence, we convert the conviction under Section 302 to Section 304//Part 2 Indian Penal Code, 1860 and quash the conviction under Section 506. The appellant has already undergone 11 years' imprisonment. Hence, we reduce the sentence to the period already undergone and we quash the fine imposed. The appellant shall be released from jail custody forthwith unless wanted in connection with some other case.

The appeal stands disposed of accordingly.

Judgment Referred.

¹(2006) 7 SCC 0391

²(2002) 3 SCC 0327