

**SUPREME COURT OF INDIA**

Pundalik

Vs.

State of Maharashtra

Crl.A.No.864 of 2010

(D.K.Jain and Deepak Verma JJ.)

23.04.2010

**ORDER**

1. Leave granted.

2. Challenge in this appeal is to the final judgment and order dated 23rd October, 2008, delivered by the High Court of the Judicature at Bombay in Criminal Appeal No.431 of 2003. By the impugned judgment, the High Court has upheld the conviction of the appellant for an offence punishable under Section 302 of the Indian Penal Code, 1860 (for short "the IPC").

3. The prosecution version in nutshell is as follows:

4. The appellant, an agricultural labourer was residing in a one room tenement near the fields of his employer with his family, comprising his wife Rukhmabai - the deceased; two daughters Jyoti and Deepa; son Santosh and mother. According to the prosecution the appellant was in the habit of beating his wife over petty matters after consuming liquor. On the fateful day i.e. 2nd June, 2002, the appellant and his wife visited town Yaolkhed in district Akola. They returned to the house in a drunken condition. The appellant questioned his wife as to why she had consumed liquor, which led to a verbal duel between them. The appellant got angry, picked up an axe and assaulted her with the handle of the axe. The incident happened in presence of the two daughters, who were present in the room.

5. The daughters went to inform their maternal grandparents about the occurrence. Rukhmabai succumbed to her injuries on the same day at 5.00 p.m. The appellant went to the police station and lodged a report that his wife had died due to intoxication on account of excessive drinking of liquor. However, another report was lodged with the police station by a neighbour of the parents of the deceased against the appellant for having committed the murder of his wife.

6. During the course of investigation, the handle of the axe was got recovered by the appellant along with his bloodstained shirt and a piece of sari. On completion of investigation, charge-sheet was filed against the appellant. The case was committed to the Sessions Court. Charge for an offence punishable under Section 302 IPC was framed. The appellant pleaded not guilty and claimed trial.

7. The prosecution, in order to establish the guilt of the appellant, examined as many as 13 witnesses. One of the daughters of the appellant was also examined as eye-witness but she did not support the case of the prosecution. The Trial Court on the basis of circumstantial evidence, came to the conclusion that the appellant had committed the murder of his wife and thus, convicted him for an offence punishable under Section 302 IPC.

8. The appellant was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/- with default stipulation. Appellant's appeal having been dismissed by the High Court, he is before us in this appeal.

9. We have heard learned counsel for the parties.

10. Learned counsel for the appellant submits that both the courts below were in error in holding the appellant guilty of an offence punishable under Section 302 IPC. It is urged that the sole eye-witness, namely, Deepa, the daughter of the appellant, has not supported the case of the prosecution and there is no other evidence on record to bring home an offence under Section 302 IPC against the appellant. Learned counsel has pleaded that even if the prosecution version is accepted in its entirety, a case under Section 302 IPC is not made out against the appellant because the occurrence took place in the course of a sudden quarrel in the heat of passion and, therefore, Exception 4 to Section 300 is clearly attracted.

11. According to the learned counsel, at best, the case would fall either under 4 Section 302 Part II or Part I of the IPC and, therefore, the appeal deserves to be allowed to that extent. Learned counsel for the State, on the other hand, supported the decisions of the court below. It was submitted that both the courts have rightly found the appellant guilty of murdering his wife and no interference in the case is called for.

12. Having heard the learned counsel and perused the material on record, in our opinion, the appeal deserves to be partly allowed. As noted above, even according to the prosecution, there used to be frequent quarrels between the appellant and his deceased wife. On the date of occurrence, finding his wife to be in an inebriated condition, he got infuriated and in the heat of passion, assaulted her with wooden handle of the axe. According to the medical evidence of Dr. Rehman Khan (PW-11), who had conducted autopsy over the body of the deceased, the cause of the death was due to haemorrhagic shock caused by haemorrhage due to fracture of left shaft femur. In his opinion, the injury which proved to be fatal, was possible by the handle of an axe. He admitted that other injuries sustained by the deceased were not sufficient in the ordinary course of nature to cause death but clarified that

haemorrhagic shock was caused because of collection of blood in thoracic cavity and fracture of shaft femur.

“Taking into account all these factors and in view of the totality of facts and circumstances of the case, in our opinion, the appellant has committed an offence punishable under Section 304 Part I of the IPC and not the offence punishable under Section 302 IPC.”

13. For the afore-going reasons, the appeal is partly allowed; the conviction of the appellant for an offence punishable under Section 302 IPC as recorded by the Trial Court and affirmed by the High Court is converted to an offence punishable under Section 304 Part I of the IPC. In our view, custodial sentence of rigorous imprisonment for a period of 8 years would meet the ends of justice. The appeal is allowed to the extent indicated above.