

SHANKAR DIWAL WADU  
v.  
STATE OF MAHARASHTRA

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MARCH 21, 2007

[S.B SINHA AND MARKANDEY KATJU, JJ.]

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*Penal Code, 1860—s. 304 Part II—Murder—In a fit of anger—Prosecution case supported by evidence of eye-witnesses and other witnesses—Corroborated by Medical evidence—Conviction by Courts below u/ss 302 and 506—On appeal, held: Accused rightly held guilty—But since the incident occurred in a fit of anger, conviction altered to one under Section 304 Part II—Sentence reduced to already undergone i.e. 11 years.*

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**Appellant - accused caused death of his brother. According to prosecution case, accused wanted to keep PW-4 (widow of his another brother) as his mistress. PW-4 refused . On the day of incident when the accused was forcibly trying to drag PW 4 in his house, the deceased objected to it. At the objection, accused got outraged and hit him with a wooden plank lying there. The assault resulted in death of the deceased. Complaint regarding the assault was lodged by PW-3 (an eye-witness). Trial Court convicted the accused under Sections 302/506 IPC. Conviction was confirmed by High Court Hence the present appeal.**

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**Disposing of the appeal, the Court**

**HELD: 1.** The courts below have rightly held the appellant guilty. There are eye-witnesses of the incident and there is no reason to disbelieve their testimony. These eye-witnesses also include PW 4. The allegation of the prosecution that it was because of PW 4 that the incident occurred is proved by PW 4 herself who is corroborated in all material particulars by PW-1 and PW-2 , PW-3 is also an eye-witness and there is no reason to disbelieve her evidence. The medical evidence corroborates the prosecution case.

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[Para 5] [255-B-C]

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**2.** However, the case comes under section 304/ Part II and not under Section 302 IPC since the incident occurred in a sudden fit of anger. Hence, the conviction under Section 302 is converted to section 304/Part II IPC and the conviction under Section 506 is quashed. The appellant has since already

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**A** undergone 11 years imprisonment, the sentence is reduced to the period already undergone. [Paras 6 and 7] [255-D-F]

*Pappu v. State of M.P.*, [2006] 7 SCC 391 and *Sukhbir Singh v. State of Haryana*, [2002] 3 SCC 327, relied on.

**B** CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 402 of 2007.

From the Judgment and Order dated 24.9.2004 of the High Court of Judicature at Bombay in Crl. A. No. 631 of 2000.

**C** Ranjan Mukherjee, and (A.C.) for the Appellant.

Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by

**D** MARKANDEY KATJU, J. 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:

**E** 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 **F** 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 **G** 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 **H** 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 IPC and also

imposed a fine.

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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.

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6. However, we are of the opinion that the case comes under Section 304/Part 2 and not under Section 302 IPC since the incident occurred in a sudden fit of anger. The decisions cited by learned counsel for the appellant vide *Pappu v. State of M.P.* [2006] 7 SCC 391, and *Sukhbir Singh v. State of Haryana* [2002] 3 SCC 327, are apposite to this case.

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7. Hence, we convert the conviction under Section 302 to Section 304/Part 2 IPC 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.

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8. The appeal stands disposed of accordingly.

K.K.T.

Appeal disposed of.