

KUSHA LAXMAN WAGHMARE

v.

STATE OF MAHARASHTRA  
(Criminal Appeal No.1414 of 2008)

SEPTEMBER 02, 2014

[M.Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

*Penal Code, 1860 – s. 304 Part-II – Punishment for culpable homicide not amounting to murder – Prosecution case that husband killed his wife by hitting her severely with wooden stick – Conviction u/s. 302 and sentence of imprisonment for life by courts below – Held: On basis of evidence of prosecution witnesses, extra-judicial confession of the husband and medical evidence, case not fit for conviction u/s. 302 – Since there is no evidence to show that accused had beaten the deceased with an intention to cause her death, conviction altered to s. 304 Part II and accused sentenced to rigorous imprisonment for ten years, which he has already served, accused enlarged on bail.*

According to the prosecution case, the appellant-husband severely beat his wife with wooden stick and she succumbed to her injuries. The courts below convicted the appellant u/s. 302 IPC and sentenced him to undergo imprisonment for life. Hence, the instant appeal.

Partly allowing the appeal, the Court

**HELD:** 1.1. There is no eye-witness to the occurrence. But the accused-appellant made extra-judicial confession before PW-1 and PW-2. No explanation was offered by the accused under Section 313 of the Code of Criminal Procedure. The *post mortem* report fully corroborated the injuries caused to the

A deceased by the appellant with wooden stick. All the  
three witnesses viz. PW-1, PW-5 and PW-6, proved the  
prosecution case. Thus, after analysing the entire  
evidence, it was not a fit case where conviction could be  
sustained under Section 302, IPC. The weapon used by  
B the appellant was a wooden stick and as per the  
prosecution case, the deceased was severely beaten by  
the said stick. As a result thereof, she died. There is no  
cogent evidence to show that the appellant had beaten  
the deceased with an intention to cause her death. In  
C such circumstances, the conviction of the appellant  
under Section 304 Part-II, IPC would be just and proper,  
thus, the conviction of the appellant is altered to Section  
304 Part-II, IPC and he is sentenced to undergo rigorous  
imprisonment for ten years, which he has already served,  
D the appellant is enlarged on bail. [Para 10, 11,12,13] [508-  
C-H; 509-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No.1414 of 2008.

E From the Judgment and Order dated 09.01.2004 of the  
High Court of Judicature at Bombay in Criminal Appeal No.  
385/1995.

Jai Prakash Narayan Gupta (A.C.) for the Appellant.

F Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

G **M. Y. EQBAL, J. 1.** Aggrieved by the judgment and order  
dated 09.01.2004 passed by the High Court of Judicature at  
Bombay passed in Criminal Appeal No.385 of 1999, this jail  
appeal by special leave has been filed by the accused. By the  
impugned judgment, the High Court affirmed and upheld the  
judgment of conviction, passed by the Sessions Judge of  
Raigad at Alibag in Sessions Case No. 127 of 1998 and  
sentenced the accused-appellant to undergo imprisonment for  
H life and pay fine of Rs.1,000/- with default clause.

2. The allegation as per the prosecution case is that appellat killed his wife Anusuya by means of wooden bar, hitting her very severely on the chest and at the back. Because of severe beating, there was internal bleeding and as a result thereof, she died. A First Information Report (for short, 'FIR') was lodged and after usual investigation, police submitted the charge-sheet against the appellat under Section 302 of the Indian Penal Code (in short, 'IPC').

3. PW-1 Devram Satu Waghmare who was police Patil of village Pilosari, deposed that in his absence the appellat visited his house and made a voluntary confession to his wife PW-2 Sunita that he had killed his wife. On getting the information, PW-1 immediately reached the spot of incident and there he found the appellat sitting beside the dead body of his wife. The appellat also narrated the story to PW-1 and confessed that he killed his wife. PW-1 then telephoned the police station from where the inspector of police arrived and arrested the accused.

4. The prosecution examined PW-2 Sunita, who is wife of PW-1. She deposed that the accused-appellat came to her house and confessed that he killed his wife by assaulting her with wooden stick. The appellat further said that he came to the house of PW-2 just to disclose this to her husband. PW-2 had told her husband PW-1 that the appellat came to the house.

5. Dr. Parshuram Kotekar was examined as PW-4, who conducted post mortem over dead body of the deceased. According to him, the death was caused due to intrathoracic haemorrhage due to fracture of right and left ribs with intracranial haemorrhage.

6. The trial court on the basis of evidence found that the accused had not at all offered any explanation in his examination under Section 313 of the Code of Criminal Procedure. The Sessions Court, therefore, came to the

A conclusion that it was the appellant who murdered his wife and accordingly convicted him under Section 302, IPC.

B 7. The High Court after re-appreciation of evidence and relying upon the extra-judicial confession made by the appellant, upheld the conviction and sentence passed by the trial court.

8. None appears on behalf of the appellant.

C 9. We have heard learned counsel appearing for the respondent-State.

D 10. Admittedly, there is no eye-witness to the occurrence. But the accused-appellant made extra-judicial confession before PW-1 and PW-2. No explanation was offered by the accused under Section 313 of the Code of Criminal Procedure. The *post mortem* report fully corroborates the injuries caused to the deceased by the appellant with wooden stick. All the three witnesses viz. PW-1, PW-5 and PW-6, have proved the prosecution case.

E 11. After giving our anxious consideration in the matter and after analysing the entire evidence, we are of the view that it is not a fit case where conviction could be sustained under Section 302, IPC. The weapon used by the appellant is a wooden stick and as per the prosecution case, the deceased F was severely beaten by the said stick. As a result thereof, she died. There is no cogent evidence to show that the appellant had beaten the deceased with an intention to cause her death. In such circumstances, the conviction of the appellant under Section 304 Part-II, IPC will be just and proper.

G 12. In the result, the appeal is partly allowed, the conviction of the appellant under Section 302, IPC is altered to Section 304 Part-II, IPC and he is sentenced to undergo rigorous imprisonment for ten years. However, the fine and default clause shall remain intact.

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13. On 05.09.2008, learned Amicus Curiae appearing for the appellant had made a statement before this Court that the incident is of March 02, 1998 and immediately thereafter the appellant was arrested and thus he has completed more than ten years in jail. Keeping in view the statement of the learned Amicus, this Court on the same day i.e. 05.09.2008 enlarged the appellant on bail. A  
B

14. Since we have altered the conviction of the appellant to Section 304 Part-II, IPC and awarded him a sentence of ten years rigorous imprisonment, which he has already served as observed in the aforesaid order passed by this Court, his bail bonds shall stand discharged. C

Nidhi Jain

Appeal partly allowed.