

PRABHAKAR VITHAL GHOLVE

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v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 448 of 2016)

MAY 06, 2016

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**[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]**

*Penal Code, 1860: s.302 – Fatal assault upon the victim-deceased at the hands of the appellant and another accused, a juvenile – Prosecution case was that occurrence originated on account of some minor grievance against the deceased that she did not convey a telephonic message to the appellant – The juvenile offender went to the house of the deceased and assaulted him – When he was overpowered by complainant party, he started crying whereupon the appellant and four others rushed to the place of occurrence – Appellant and juvenile offender used sticks to cause injuries on the head of the deceased which resulted in his death – Conviction of appellant u/s.302 attracting sentence of life imprisonment – On appeal, held: There was no reason for the assault except an assertion that the appellant was unhappy on a minor issue that the deceased had received some message on telephone but did not convey the same to the appellant – No case was made out by the prosecution that there was any motive for doing away with the life of the deceased – Conviction of appellant u/s.302 set aside and substituted with conviction u/s.304 Part I – Sentence of life imprisonment reduced to imprisonment for the period already undergone by the appellant.*

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**Allowing the appeal, the Court**

**HELD:** It is evident that there was no motive, alleged or proved, for the occurrence of assault upon the deceased. In the given facts and scenario, it can be safely inferred that there was no intention on the part of the accused persons to cause death. However, the injuries on head did prove fatal and knowledge of such effect of the injuries can be fastened against the appellant. In view of Exception 1 or Exception 4 in Section 300 of the IPC, the case made out against the appellant is that of culpable homicide not amounting to murder. It would be natural for the family

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- A members of juvenile offender on hearing his cries, to rush for his help and when injury on the appellant has also been proved there is sufficient material to infer the reasonable possibility of a grave and sudden provocation. The assault on the deceased, in absence of intention to cause death could be on account of sudden fight without pre-meditation, in the heat of passion and upon a sudden quarrel. The conviction of the appellant under Section 302 IPC is set aside and is substituted with conviction under Section 304 Part I of the IPC. The certificate of imprisonment available on record discloses that the appellant has by now undergone more than 12 years of actual imprisonment which period is sufficient to meet the ends of justice. Hence the sentence of imprisonment for life is reduced to imprisonment for the period already undergone by the appellant. [Paras 6, 7] [598-C-G]
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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 448 of 2016.

- D From the Judgment and Order dated 06.01.2014 of the High Court of Bombay in Crl.A No. 87 of 2005.

Jayant Muth Raj, Sabrish Subramanian, Prabhurama Subramanian, Deepak Anand for the Appellant.

- E Vadrevu V. V. Pattabhiram, Nishant Ramakantrao Katneshwarkar for the Respondent.

The Judgment of the Court was delivered by

- F **SHIVA KIRTI SINGH, J. 1.** By the impugned judgment and order under appeal dated 06.01.2014 the High Court of Judicature at Bombay dismissed Criminal Appeal No.87 of 2005 preferred by the appellant and confirmed his conviction for an offence under Section 302 of the IPC as well as sentence of life imprisonment and fine of Rs.1000/- with a default clause as imposed by the Addl. Sessions Judge, Solapur by judgment dated 31.12.2004 in Sessions Case No.132 of 2004.

- G 2. The main issue raised by learned counsel for the appellant is whether conviction of the appellant under Section 302 IPC is justified and lawful when the prosecution, as per submissions, has failed to allege and prove any motive for the assault upon the deceased at the hands of the appellant and another accused Balu, a juvenile. It is also contended that the courts below failed to appreciate the implications of evidence of
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PW-6, Bapulal Shaikh Lal Golve who is the brother of the deceased and an eye witness. It was also pointed out that the courts below including the High Court did not appreciate that as per the evidence of the doctor, PW-5 who had conducted the post mortem examination on the dead body of the deceased, the appellant had also sustained two injuries including one contused lacerated wound over left side of forehead above the left eye 2.0 cms x 0.5 cms vertical. The other injury was an abrasion over back central region 0.5 cms x 0.5 cms. Both the injuries were by hard and blunt object.

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3. On the basis of aforesaid materials, according to learned counsel for the appellant the conviction could at best be valid under Section 304 Part I and not under Section 302 of the IPC.

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4. On hearing the counsels for both the parties and going through the relevant materials we find that practically there is no reason for the assault except an assertion that the appellant was unhappy with a female inmate of the house of prosecution party on a minor issue that she had received some message on telephone but did not convey the same to the appellant. This has been disclosed by PW-4 who claims to be an eye witness. No case has been made out by the prosecution that there was any motive for doing away with the life of the deceased. As per manner of assault, accused persons assaulted the deceased as well as PW-4 and one Ishwar. Subsequently, PW-4 has alleged that the deceased was assaulted on head by the appellant as well as the juvenile offender Balu. According to medical evidence the deceased had received injuries on head resulting into fracture of skull near the parietal left eminence.

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5. As noted earlier, PW-6 who is brother of the deceased has also claimed to be an eye witness. He has deposed that appellant was abusing his aunt for not communicating a telephonic message but PW-6 managed to pacify and send the appellant back to his house. Thereafter the juvenile offender Balu came to their house and allegedly assaulted PW-4 and the deceased on head by stick. On hearing shouts, PW-6 rushed to the place of occurrence and caught accused Balu. When he pushed Balu with a view to take him towards Balu's house, Balu shouted in loud voice and entreated to be released. On hearing his shouts the appellant as well as four others came to the spot with sticks. Allegedly the appellant assaulted the deceased by stick on head followed by Balu who also assaulted the deceased by stick on head. The deceased fell down and died immediately.

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6. Taking an overall broad view of the facts noticed above, it is

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A abundantly clear that the occurrence originated on account of some minor grievance against a lady that she did not convey a telephonic message to the appellant. The appellant thereafter came back to his house. For reasons which are not very clear, the juvenile offender Balu went to the house of the prosecution party and allegedly committed assault for which he was overpowered. On his cries, the appellant and four others rushed with sticks. The appellant, as per medical evidence, sustained two injuries by hard and blunt substance and some persons of the prosecution party also received injuries on account of assault by the accused persons. The appellant as well as juvenile offender Balu used stick to cause injuries on the head of the deceased who died due to such assault. It is evident, as noticed earlier, that there was no motive, alleged or proved, for the occurrence of assault upon the deceased. In the given facts and scenario, it can be safely inferred that there was no intention on the part of the accused persons to cause death. However, the injuries on head did prove fatal and knowledge of such effect of the injuries can be fastened against the appellant.

D 7. In the facts and circumstances noted above, there appears merit in the submission advanced by learned counsel for the appellant that in view of Exception 1 or Exception 4 in Section 300 of the IPC the case made out against the appellant is that of culpable homicide not amounting to murder. It would be natural for the family members of juvenile offender Balu on hearing his cries, to rush for his help and when injury on the appellant has also been proved there is sufficient material to infer the reasonable possibility of a grave and sudden provocation. The assault on the deceased, in absence of intention to cause death could be on account of sudden fight without pre-meditation, in the heat of passion and upon a sudden quarrel. We therefore feel persuaded to and do set aside the conviction of the appellant under Section 302 IPC and substitute the same with conviction under Section 304 Part I of the IPC. The certificate of imprisonment available on record discloses that the appellant has by now undergone more than 12 years of actual imprisonment. The aforesaid period, in our estimate is sufficient to meet the ends of justice. Hence the sentence of imprisonment for life is reduced to imprisonment for the period already undergone by the appellant. In view of such modification in the sentence, the appellant is directed to be released from custody forthwith if not required to be kept in custody in connection with any other criminal case. The appeal stands allowed to the aforesaid extent.

H Devika Gujral

Appeal allowed.