

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPEAL NO.573 OF 2018**

Sunil Ramchandra Khobragade,  
Aged about 43 years, Occu. Labour,  
R/o Shivapur Bandar, Tah. Chimur,  
District: Chandrapur

...APPELLANT

// VERSUS //

State of Maharashtra,  
through Police Station Officer,  
Police Station, Chimur,  
District : Chandrapur

...RESPONDENT

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Shri Sumit G. Joshi, Advocate (appointed) for the appellant.  
Smt. Mayuri Deshmukh, APP for the respondent/State.

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**CORAM : V.M. DESHPANDE AND G. A. SANAP, JJ.**  
**DATE:- 12/01/2022**

**JUDGMENT: (Per: G.A. Sanap, J.)**

1. In this appeal challenge is to the judgment and order dated 26.09.2017 passed by learned Additional Sessions Judge,

Warora District Chandrapur whereby learned Additional Sessions Judge convicted the appellant/accused under Section 302 of the Indian Penal Code and sentenced him to suffer life imprisonment and to pay fine of Rs.5,000/- and also convicted under Section 323 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for three months and to pay fine of Rs.1,000/-. On both counts, in default to payment of fine, the rigorous imprisonment for one year and simple imprisonment for 15 days respectively was awarded.

2. The facts given rise to this appeal are as follows:-

The incident occurred on 02.05.2016 at around 7.00 AM at Mouza Shivapur, Bandar. It is the case of prosecution that the appellant is the husband of the deceased Nirasha. Deceased Nirasha, three months prior to the incident, on account of dispute between her and the appellant started residing separately from the appellant at her sister's house at Shivapur Bandar, Taluka Chimur District Chandrapur.

3. The accused, 15 days prior to the incident had gone to the house of Vandana Khobragade, the sister of the deceased to take back the deceased. However, the deceased refused to cohabit with him.

4. The deceased started residing at the house of her sister Vandana Khobragade inasmuch as appellant would suspect her character. At the time of the incident, the informant Vandana Khobragade had gone to forest for collecting Tendu leaves. The deceased was washing utensils in the courtyard. Son of Vandana Khobragade by name Rahul was present in the house. The accused came there and insisted the deceased Nirasha to accompany him. The deceased refused to accompany him. The appellant was carrying a sharp pointed iron tocha. The appellant mercilessly inflicted the blows with iron tocha on the chest, forearm and abdomen of deceased. Rahul came to rescue deceased but he could not prevent the appellant from assaulting the deceased. The helpless deceased Nirasha started running to save her life on the road towards the house of one Shri Bandu Dhok. The accused chased her and repeatedly assaulted her by means of

iron tocha. One Shalikram Gharat and Shri Bandu Dhok saw the incident, they came running and caught hold the appellant. The deceased fell down near the house of Bandu Dhok. The villagers carried the Nirasha in injured condition firstly to Chimur Government Hospital. Then they shifted her to Nagpur General Hospital. However, on the way the deceased Nirasha succumbed to the injuries.

5. One Shri Dnyaneshwar Gayakwad made a phone call to Valmik Ramteke, who was in the forest to convey the incident to Vandana who had gone there to collect Tendu leaves. On receipt of the information of the incident Vandana came back. She came to know about the incident of an assault by the appellant on the deceased Nirasha. She went to the police station and lodged the report. A report was reduced into writing. Initially the crime was registered under Section 307 of the Indian Penal Code. Meanwhile, the postmortem was conducted on the dead body at Nagpur General Hospital. On receipt of the postmortem report, the offence under Section 302 of the Indian Penal Code was added in the crime.

6. The Investigating Officer (PW-26) conducted the investigation. He drew the spot panchanama. He collected the blood and other samples. He recorded the statements of the witnesses. The weapon used in the offence was seized from the spot. After completion of the investigation, the charge-sheet was filed against the appellant.

7. Learned Additional Sessions Judge vide Exh.4 framed the charge against the accused. The accused pleaded not guilty. The defence of the accused is that the deceased fell on the thorny compound and sustained multiple injuries. He has been falsely implicated in the case. Learned Additional Sessions Judge on analysis of the material found the accused guilty of the offences punishable under Section 302 and Section 323 of the Indian Penal Code and awarded the sentence as above. Being aggrieved by the judgment, the appellant is before this Court in appeal.

8. We have heard Shri Sumit Joshi, learned Advocate (appointed) for the appellant and Smt. Mayuri Deshmukh, learned APP for the respondent/State. We have gone through the record and proceedings

9. Shri Sumit Joshi, learned Advocate for the appellant submitted that case of the prosecution rests on the evidence of the interested witnesses. Learned Advocate by drawing our attention towards the evidence of the eye witnesses submitted that there are inconsistencies in their evidence on material aspects. The evidence of eye witnesses is not credible and as such cannot be accepted. Learned Advocate submitted that prosecution has failed to establish the guilt of the accused beyond reasonable doubt. Learned Advocate took us through the reasons recorded by learned Additional Sessions Judge and submitted that the same are not convincing to maintain the conviction and sentence. Drawing our attention to the evidence of the police officer, learned Advocate submitted that Investigating Officer has concealed material facts in this case and therefore, on this ground as well the benefit is required to be given to the appellant.

10. Learned Advocate in the alternative submitted that, at the most, the case against the appellant would be covered under the provisions of Section 304 part (II) of the Indian Penal Code. Learned Advocate took us through the evidence and submitted

that as a result of quarrel between the appellant and deceased the deceased gave provocation to the appellant and in grave and sudden provocation the accused committed the crime. Learned Advocate submitted that in this case, the conviction and sentence is required to be altered and modified and the accused is required to be awarded lesser punishment under Section 304 (II) of the Indian Penal Code.

11. Learned APP submitted that in this case, there are four eye witnesses to the incident. Learned APP submitted that the incident as well as the brutality displayed by the appellant at the time of the crime has been proved on the basis of evidence eye witnesses. In the submission of learned APP the evidence of all the eye witnesses is natural and credible. Learned APP submitted that the oral evidence of eye witnesses has been corroborated by the medical evidence. Learned APP pointed out that Rahul (PW-3) had sustained the injury when he tried to stop the accused from attacking the deceased. Learned APP by drawing our attention to the postmortem report at Exh. 32 and the evidence of Dr. Laxmikant Sadashiv Rathod (PW-14) submitted that the

prosecution has proved beyond doubt that the intention of the appellant was to commit murder of the deceased. Learned APP submitted that learned Additional Sessions Judge has recorded the sound reasons and based on the same, sentenced the appellant to life imprisonment.

12. In order to appreciate the rival submission, we have minutely perused the record and proceedings. We have also gone through the judgment and order passed by learned Additional Sessions Judge. The appellant has taken a defence that the deceased fell on the thorny compound around the spot of incident and sustained multiple injuries and died. In order to prove the case of prosecution, near about 26 witnesses have been examined. Out of these witnesses, four witnesses are eye witnesses. Perusal of the evidence of eye witnesses would show that their presence on the spot is natural. Before proceeding to appreciate the evidence of eye witnesses, at the outset, it would be necessary to consider the evidence of Dr. Laxmikant Rathod (PW-14) who had conducted the postmortem. Exh.32 is the postmortem report. The perusal of the postmortem report would show that 36 injuries were found on



the body of the deceased. All these injuries have mentioned in column No.17 of the postmortem report. Dr. Laxmikant Rathod (PW-14) has deposed that injury Nos. 4, 17 and 18 were individually sufficient in the ordinary course of nature to cause death of deceased. In order to understand the serious nature of the those injuries at a glance, it would be necessary to reproduce the same. The same are as follows:-

“Injury No.4 : Stab wound present over left side of abdomen, lateral end 7 cm above and lateral to umbilicus and medial end 28 cm below left nipple, transversly oblique of size 0.7 cm x 0.3 cm x cavity. Margins clean cut and blood infiltrated. Track of wound : skin-sub cutaneous tissue-muscle-ractus sheath-peritoneum-stomach anterior surface.

Injury No.17 : Stab wound present over right side of back of trunk, medial end 7 cm from mid line and lateral end 18 cm above highest point of illiac crest, transversly oblique of size 0.7 cm x 0.3 cm x cavity depp. Margins clean cut and blood infiltrated. Track of wound : skin-sub cutaneous tissue-muscle-posterior abdominal wall peritoneum posteriorly – posterior surface of right lobe of liver.

Injury No.18 : Stab wound present over left side of lateral aspect of trunk, lower end 28 cm above left anterior superior illiac spine vertically oblique of size 0.6 cm x 0.3 cm x cavity deep. Margins clean cut and blood infiltrated. Track of wound : skin – sub

cutaneous tissue-muscle-posterior abdominal wall—peritoneum posteriorly-- upper pole of left kidney.

13. In the evidence as well as in the postmortem report Dr. Laxmikant Rathod (PW-14) opined that the stab injury over the abdomen was probable cause of death. It has also been specifically mentioned that in the postmortem report as well as in substantive evidence that injuries Nos.4, 17 and 18 with its corresponding internal injuries were individually and collectively sufficient in the ordinary course of nature to cause the death. Dr. Laxmikant Rathod (PW-14) has stated that all the 36 injuries were antemortem. In his cross examination, he has admitted that if a person falls on a thorny Babul and Bharati sticks during scuffle for 2-3 times, then injury Nos. 4, 17 and 18 could be caused. Harping on this admission, it is submitted that possibility of death due to accidental fall could not be ruled out. In our view, said admission has to be appreciated in *juxta* position with other oral and documentary evidence.

14. Perusal of the spot panchanama Exh.-6 would show

that fencing was made up of Turathi sticks. Investigating Officer (PW-26) drew the spot panchanama. It was suggested to him that fencing was made up of Babul sticks. He has denied the said suggestion. It is pertinent to mention that fencing of Turathi sticks and Babul sticks is totally different. A Turathi sticks fencing by no stretch of imagination could be said to be the cause of such injuries. It is mentioned in the panchanama that this Turathi sticks fencing is not firm and hard. In this case, the weapon used is iron tocha. Dr. Nikhil Lanjewar (PW-19) gave opinion in writing that death of victim could be possible due to inflicting of the blows with iron tocha. It is further pertinent to note that even if the person falls on the Turathi sticks compound, he would not receive multiple stab wounds all over the body. The evidence of eye witnesses clearly establish that the appellant mercilessly inflicted the blows with iron tocha all over her body. Within a short time she became unconscious on the spot. In our view, on the basis of this evidence, the possibility of death being accidental, as sought to be suggested by the appellant, has been ruled out. The evidence is sufficient to prove that the deceased died a homicidal death. There were 36 injuries all over the body of the deceased. There

were multiple injuries inflicted with the iron tocha on the vital parts of the body. Dr. Laxmikant Rathod (PW-14) has opined that the injuries cumulatively as well as individually were sufficient to cause death in the ordinary course of nature.

15. This would take us to the evidence of eye witnesses. At the outset it is necessary to mention that eye witnesses are not the chance witnesses. Their presence on the spot and around the spot is natural. Rahul (PW-3) who is the son of the sister of the deceased is the first eye witness to the incident. The deceased was staying at the house of her sister due to dispute between deceased and appellant. The appellant as can be seen from the evidence raised the suspicion on the character of deceased and therefore, the deceased had declined to go to the house of the appellant. In his evidence Rahul (PW-3) has narrated the incident in great detail. He has deposed that his mother had gone to forest for plucking the Tendu leaves. His father had gone to Bhatala village for work. He was present in the house. The deceased was cleaning the utensils in the courtyard. He has stated that he heard the noise and therefore, he came out of the house. He saw that the appellant

was inflicting the blows with iron tocha on the stomach, chest and hands of the deceased. He pushed the appellant. The appellant fell down. He assaulted with bucket on the face of the appellant. He has deposed that taking the advantage of this position, the deceased ran towards the road. The appellant rescued himself from his clutches and ran behind the deceased. The appellant inflicted blows on the person of the deceased. The deceased fell down on the road. At that time Bandu Dok and Shaligram Gharat caught the accused. Considering the serious condition of the deceased they brought the vehicle and took the deceased in Chimur Government Hospital. This witness has been cross-examined. This witness has sustained injury to his leg when he tried to rescue the deceased from the clutches of the appellant. This fact has been supported by medical certificate. Dr. Nikhil Kamdi (PW-25) had examined him. His injury certificate is at Exh.-67. Perusal of his cross examination would show that no substantial material has been elicited to discard his evidence and the first hand account of the incident narrated by him.

16. There are other eye witnesses. Sonu Borkar (PW-4) has

deposed that when he was present in his house, he heard the noise from outside. He went outside. He saw accused assaulting the deceased by means of tocha. He has stated that he went and tried to extend the help. He caught hold the accused. The accused chased the deceased. The deceased fell down on the road by the side of house of Bandu Dhok. He has deposed that at that time Bandu Dhok and Shalikram Gharat came there and caught hold the accused. Shalikram Gharat (PW-6) has deposed that he saw the accused chasing the deceased and inflicting blows with tocha. He has deposed that she fell down in front of the house of Shri Bandu Dhok. He has deposed that he caught hold the accused and in the meantime Shri Shribharosh Dhok and his wife came there. PW-7 is Shri Shribharosh Dhok. He has deposed that he saw deceased lying on the road and the accused assaulting her by means of tocha. He has stated that he and Shri Shaligram Gharat controlled the accused. Chhamitra Dhok (PW-8) is wife of Shri Shribharosh Dhok. His wife (PW-8) has deposed that she gave a water to deceased when she fell on the ground. Similarly she found the weapon used in the offence beneath chair while cleaning her courtyard. Perusal of the cross examination of these witnesses

would show that there is nothing in the cross examination to doubt their presence on the spot. Similarly no material has been elicited to doubt their version about the incident. The presence of all the witnesses on and around the spot is natural. On minute perusal and appreciation of their evidence, we do not find even a ring of falsehood to their evidence. The medical evidence is sufficient to prove that Rahul (PW-3) who is the star eye witness had suffered injuries while rescuing the deceased. In our view, the evidence of the witnesses is credible and deserves acceptance. No material has been brought on record to shake the credibility of these witnesses.

17. On minute analysis of the evidence of above eye witnesses, we are convinced that defence of the appellant is highly improbable. The defence of the appellant in the teeth of medical evidence and the evidence of eye witnesses that the deceased fell on thorny sticks compound and sustained multiple injuries cannot be accepted. Medical Officer has categorically opined on seeing the weapon that the injuries on the person of the deceased could be caused with this weapon.

18. It is said that the motive for commission of a crime is always locked in the mind of the accused. Motive for commission of a crime is relevant fact. If the motive is unlocked by the evidence, then it becomes important factor in support of the case of prosecution. In this case, there is a motive for the accused to commit this brutal crime. The appellant and deceased for some time stayed together as husband and wife. It has come on record that the appellant started suspecting the character of the deceased. Deceased did not like it. She therefore, came to reside with her sister Vandana Khobragade. The appellant made desperate efforts to take the deceased back and start his married life afresh. However, deceased was not ready inasmuch as she felt deeply hurt because of suspicion raised by the appellant on her character. The manner of assault would clearly indicate that the appellant was convinced that deceased would not return back and join his company. The appellant, therefore, had every reason to take the deceased back by hook or crook. When the deceased flatly refused to accompany him, the appellant having lost the hope of continuing his married life with the deceased, brutally attacked her. In this case, therefore, motive has also been proved.



19. Apart from the evidence of the eye witnesses and evidence of motive, there is other corroborative evidence. The incident occurred on 02.05.2016 at 7.00 AM. The accused was arrested on 02.05.2016 itself at 20.04 hours. The arrest panchanama is at Exh.78. The accused was sent for the medical examination. Dr. Nilesh Lokhande (PW-15) examined him. The medical certificate is at Exh.34. The certificate would show that injuries were not found on the person of the accused. In this case it has been proved that clothes on the person of the accused at the time of incident were seized. His clothes were stained with blood. Clothes were forwarded to CA for examination. Exh.58 is the chemical analysis report. In the CA report on analysis, CA opined that human blood was detected on the clothes of accused as well as on the iron tocha, the weapon of the offence. The blood group of the appellant is B. The record reveals that the blood samples were also sent for DNA analysis. The DNA report was received. However, the same has not been exhibited. The accused has not explained the presence of the blood on his clothes and the weapon used by him. In our view, this evidence would corroborate the evidence of the other witnesses.

20. The evidence of doctor who conducted postmortem report also corroborates the evidence of other witnesses. Similarly the evidence of the medical officer who had examined Rahul (PW-3) also corroborates the evidence of Rahul. The presence of Rahul, on the spot and his evidence cannot be disbelieved.

21. Govinda Meshram (PW-12) is the neighborer of the accused. He has deposed about ill treatment meted out to the deceased by the appellant. There are three witnesses who had accompanied the deceased in the vehicle initially to the hospital at Chimur and from Chimur to the Nagpur Civil Hospital. Those witnesses are Smt. Dharti Gedam (PW-10), Jaswanda Shrirame (PW-13) and Pradip Meshram (PW-16). In their evidence these witnesses have deposed about the serious condition of the deceased. These witnesses have stated that they accompanied the deceased in the vehicle. Initially to Chimpur Government Hospital and from Chimur to Nagpur Hospital. Perusal of the cross examination of these witnesses would show that their credibility has not been shaken at all. They are natural witnesses. Besides, their evidence is corroborated by the contemporaneous

documentary evidence. In our view, therefore, the evidence of these witnesses corroborated the case of the prosecution. This evidence lends an assurance to the case of the prosecution on the point of incident and also to the credibility of the eye witnesses.

22. It would be necessary to deal with the submission advance by learned Advocate for the accused that in this case if the evidence of the prosecution is considered in totality, then at the most the offence of a culpable homicide not amounting to murder would get attracted. Learned Advocate submitted that on the basis of the evidence the learned Additional Sessions Judge ought to have held the appellant guilty of the offence of culpable homicide not amounting to murder and awarded him the punishment provided under Section 304 part (1) of the Indian Penal Code. In the submission of learned Additional Public Prosecutor, in the teeth of the cogent and concrete evidence which clearly reflects upon the intention of the accused to kill the deceased, learned Additional Sessions Judge was right in rejecting the plea of the accused on this point. We have minutely perused the evidence. In our view, in this case, the submission advanced by learned

Advocate that in the totality of the evidence the offence made out would be culpable homicide not amount to murder cannot be accepted. The prosecution has proved motive. The deceased was well educated. She was doing service as a teacher Anganwadi. There was matrimonial dispute between the appellant and the deceased. In view of the ill treatment at the hands of the appellant she took a decision to reside separately at the house of her sister Vandana Khobragde. It is the case of the accused that when he insisted the deceased to accompany him to his house, the quarrel took place between him and the deceased. Deceased abused him and therefore, on account of grave and sudden provocation given to him by the deceased the incident took place. The appellant has tried to explain this in his examination under Section 313 of the Criminal Procedure Code. He has stated that when he went to the house of her sister to fetch her back, she refused to accompany him. The deceased told him that for her the appellant is dead. She broke her bangles. In our view even, if this statement is accepted as it is, it would not constitute a grave and sudden provocation. This is regular happening in the family life.

23. The appellant had carried the weapon with him. The appellant inflicted 36 blows on the body of the deceased. The three injuries noted above were on the vital parts of the body and sufficient in the ordinary course of nature to cause the death. The appellant initially inflicted the blows with the weapon on the person of the deceased in the courtyard of the house. When she was rescued from the clutches of the appellant by Rahul (PW-3) she made of feeble attempt to save her life by running on road. The appellant chased her and inflicted multiple blows with the weapon on her body. The deceased fell down on the road and the appellant continued the assaulted. The neighborers came there. They caught hold the appellant. By the time the appellant was overpowered by the neighborers the deceased had become unconscious. In our view, this sequence of the attack by the appellant on the body of the deceased clearly indicate that he intended to kill the deceased inasmuch as she had refused to join his company at the matrimonial home. The intention of the appellant can be gathered from the brutality of the attack, the number of injuries inflicted by him and his conduct through out the attack on the deceased. The injuries were found sufficient in

ordinary course of nature to cause the death. The intention of the appellant to eliminate the deceased has been proved on the basis of the oral testimony of the witnesses, the brutality displayed by the appellant and his conduct. In our view, therefore, the submission on this point cannot be accepted.

24. We therefore, conclude that the evidence on re-appreciation and analysis is found worth credible. Learned Additional Sessions Judge has recorded the reasons in support of the contention. We do not see any reason to interfere with the judgment. Accordingly appeal fails. Hence the following order:-

### ORDER

1. The appeal is dismissed.
2. Shri Sumit Joshi, learned Advocate (appointed) for the appellant is entitled to receive his professional charges from Legal Aid Sub Committee, Nagpur to argue this matter before this Court and we quantified it at Rs.10,000/-.

JUDGE

JUDGE