

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

CRIMINAL APPEAL NO.347 OF 2019

Suresh Madhukar Shendre,
Aged about 36 years,
Convict No.C-9714, detained in Central
Prison at Nagpur, Accused in S.T.No.111/2015,
Occupation - Farm Labour,
Resident of Nanded Gopaltoli,
Tahsil Nagbhid, District Chandrapur. **Appellant.**

:: V E R S U S ::

State of Maharashtra,
Through PSO PS Nagbhid,
District Chandrapur. **Respondent.**

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Shri S.G.Joshi, Counsel Appointed for the Appellant.
Shri M.J.Khan, Additional Public Prosecutor for the State.
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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.

JUDGMENT RESERVED ON : 21/11/2022
JUDGMENT PRONOUNCED ON : 06/12/2022

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. By this appeal, the appellant challenges judgment and order dated 20.7.2017 passed by learned Additional Sessions Judge, Chandrapur in Sessions Case No.111/2015 whereby he is convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine Rs.50,000/- and in default of payment of the fine amount to suffer

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rigorous imprisonment for six months. The appellant is also given set-off under Section 428 of the Indian Penal Code since he is in jail.

2. Heard learned counsel Shri S.G.Joshi appointed for the appellant and learned Additional Public Prosecutor Shri M.J.Khan for the State.

3. The case of the prosecution in a nutshell is as under:

The crime is registered on the basis of report lodged by one Sunil Shendre on 4.9.2015 on allegations that deceased Chhaya was residing along with her husband i.e. the appellant (for short, "the accused") and daughter Kajal in his neighbourhood. He is residing along with his family at Nanded, taluka Nagbhid, district Chandrapur. The accused is in a habit of drinking liquor and used to beat his wife on trifle reasons. On 3.9.2015, when the informant was sleeping in his house, he heard the accused abusing his wife and, therefore, he came out of his house. It is alleged that he saw that the accused was quarreling with his wife started assaulting her by kick and fist blows on the count that she had not cooked meat properly and she burnt it. It is further alleged that when the informant went there, the accused threatened him that if he intervenes in the quarrel, he will kill him. Due to the threat, the informant left along with accused's daughter Kajal. At about 11:30

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p.m., he saw that the wife of the accused is lying dead in the shed and, therefore, he approached police and lodged the report.

4. On the basis of the report lodged by the informant, Nagbhid Police Station, District Chandrapur registered the offence vide Crime No.101/2015 under Section 302 of the Indian Penal Code. After registration of the crime, wheels of investigation started rotating. During investigation, Investigating Officer visited the alleged spot of the incident and seized incriminating articles, pieces of bangles, and a stick by drawing spot panchnama. The Investigating Officer also drawn inquest panchnama, seized clothes of deceased, clothes of accused, and samples of deceased and accused, collected postmortem notes and after completion of the investigation, submitted chargesheet against the accused in the Court of law.

5. Learned Magistrate committed the case to the Court of Sessions. The charge was framed against the accused vide Exhibit-3. The accused pleaded not guilty and claimed to be tried.

6. To substantiate the charge levelled against the accused, the prosecution examined as many as 11 witnesses, as mentioned below:

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(1) Vilas Bhajandas Mungmode (PW1) (Exhibit-15), pancha on spot;

(2) Natthu Mahadeo Ramgude (PW2) (Exhibit-23), pancha on clothes' seizure panchanama ;

(3) Sunil Suresh Shendre (PW3) (Exhibit-27), informant;

(4) Kajal Suresh Shendre (PW4) (Exhibit-37), the daughter of the accused and the deceased;

(5) Tarabai Suresh Shendre (PW5) (Exhibit-41), neighbour;

(6) Indubai Suresh Raut (PW6) (Exhibit-46), neighbour;

(7) Dr.Sanjaykumar Diwakarrao Shivankar (PW7) (Exhibit-54), Medical Officer;

(8) Ashwin Ramesh Bangre (PW8) (Exhibit-62), photographer;

(9) Ravindra Rajiram Shende (PW9) (Exhibit-64), photographer;

(10) Pundlik Tulshiram Maske (PW10) (Exhibit-69), Assistant Police Inspector, and

(11) Reena Yadaorao Janbandhu (PW11) (Exhibit-73), Investigating Officer.

7. Besides the evidence, the prosecution relied upon various documents including spot panchnama Exhibit-19, inquest panchnama Exhibit-21, clothes' seizure panchnamas Exhibits-24

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and 25, seizure memo Exhibit-26, oral report Exhibit-28, printed First Information Report Exhibit-29, and Chemical Analyzer's Reports.

8. The defence of the accused is of total denial. As per defence of the accused, the deceased was suffering from "Epilepsy" and on the day of incident she had stroke of Epilepsy and fallen on the ground and sustained injuries.

9. Learned counsel Shri S.G.Joshi for the appellant submitted that to prove the homicidal death the prosecution examined PW7 Medical Officer Dr.Sanjaykumar Diwakarrao Shivankar. Though the Medical Officer has denied the possibility of sustaining injuries due to the fall due to stroke by Epilepsy, the oral evidence shows that the deceased was suffering from Epilepsy and and on the day of the incident also due to Stroke of Epilepsy she fallen on the ground and sustained injuries. He further submitted that the oral evidence of witnesses PW3 informant Sunil Suresh Shendre and PW4 accused's and deceased's daughter Kajal Suresh Shendre who acquainted with the deceased specifically stated that the deceased had sustained injuries due to the fall. Thus, the prosecution has not proved the homicidal death of the deceased. He further submitted that the prosecution relied on the evidence of

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PW3 informant Sunil Suresh Shendre; PW4 accused's and deceased's daughter Kajal Suresh Shendre; PW5 accused's neighbour Tarabai Suresh Shendre, and PW6 accused's neighbour Indubai Suresh Raut who had not supported the prosecution case. Thus, the prosecution failed to prove the charges levelled against the accused. Alternatively, he submitted that even if the prosecution case is taken as it is, there was no intention on the part of the accused to commit the murder of the deceased, whatever happened is in a spur of moment as the accused lost his self control as the deceased had not cooked the food properly. The accused has not acted brutally. The injuries sustained by the deceased were not on the vital parts. The exception 4 under Section 300 of the Indian Penal Code is available to the accused. In a sudden fight and a sudden quarrel, the accused had given the blow by stick and the deceased succumbed to death. He further submitted that the prosecution relied on the evidence of PW3 informant Sunil Suresh Shendre; PW4 accused's and deceased's daughter Kajal Suresh Shendre; PW5 accused's neighbour Tarabai Suresh Shendre, and PW6 accused's neighbour Indubai Suresh Raut who had not supported the prosecution case. Thus, the prosecution failed to prove the charges levelled against the accused. He submitted that the accused be acquitted from the charge and alternatively he

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prayed for the lesser punishment in view of the exception sudden fight and sudden quarrel.

10. On the other hand, learned Additional Public Prosecutor Shri M.J.Khan for the State submitted that the deceased is the wife of the accused. The accused had committed her murder by assaulting her repeatedly and due to the repeated blows the deceased had sustained in all six injuries as well as internal injuries which resulted into her death. There was instantaneous death of the deceased. Though PW3, PW4, PW5, and PW6 had not supported the prosecution case, circumstantial evidence on record is sufficient to show that the accused is the perpetrator of the crime. The defence of a sudden fight and a sudden quarrel is not available to the accused as the quarrel was only from one side. Hence, no interference is called for in the judgment and order impugned in the appeal.

11. As regards the homicidal death of the deceased namely Chhaya is concerned, the material evidence adduced by the prosecution is the testimony of PW7 Medical Officer Dr.Sanjaykumar Diwakarrao Shivankar who conducted the postmortem examination on Chhaya and PW1 Vilas Bhajandas Mungmode who acted as pancha on the inquest panchnama. The testimony of PW1 Vilas

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shows that he was called by the police in the hospital and in his presence the panchnama regarding the dead body was conducted. He witnessed that there was injury on the lower lip as well as on the lower abdomen portion over the left thigh. Accordingly, inquest panchanama (Exhibit-21) was drawn. Though PW1 Vilas was cross-examined at length, nothing incriminating is brought on record to deny the injuries on the person of the deceased.

12. The prosecution has placed implicit reliance on the evidence of PW7 Medical Officer Dr.Sanjaykumar Diwakarrao Shivankar, who has deposed that he performed postmortem on the dead body on 4.9.2015 and noted the external injuries on the said dead body in column No.17 of the postmortem report, which are mentioned below:

- “(1) swelling of face;
- (2) contusion over right infra orbital region 4x3x2 cm;
- (3) contusion over right maxila of size 3x2x1 cm;
- (4) contusion over left maxila of size 3x3x2 cm;
- (5) abrasion over left forehead size 3x3 cm;
- (6) tenderness over left side of chest; and
- (7) swelling over left side of chest.”

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The Medical Officer has also noted internal injuries like fracture over the fourth rib on left side, contusion over the middle part of left lung, contusion over the left side of heart anteriorly of size 3x2 cm. There was rupture of pancreas, bleeding was present and rupture over the splin area of size 3x2 cms. As per the evidence of the Medical Officer, all injures were antemortem and those were possible due to forceful assault by means of hard object like wooden rod, steel rod, kick and fist blows etc.. The cause of death was due to "Cardiogenic Shock" due to injury to vital organ. He further deposed that he also collected the blood samples of the deceased and forwarded it to the police. When the deceased was brought to him, her apparels were stained with blood. Accordingly, he prepared the postmortem notes Exhibit-56. He also replied to the query report to the police and opined that the wooden rod referred to him was of height 2 feet 3 inches with circumference of 6.5 inches and injuries are possible by the said weapon.

13. The Medical Officer was cross-examined at length by the defence and tried to suggest that the injuries sustained by the deceased are possible due to the fall on the hard surface which was denied by the said Medical Officer. He further denied that the deceased had sustained injuries due fall on the ground due to stroke of Epilepsy. Thus, the defence of the accused is that the

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deceased had sustained injuries due to fall on the ground as she had a stroke of Epilepsy. Though the accused had taken the defence that the deceased was suffering from Epilepsy, no document regarding her treatment is filed on record to support the contention.

14. After appreciating the evidence of PW7 Medical Officer Dr.Sanjaykumar Diwakarrao Shivankar and inquest report, it reveals that the deceased had sustained injuries due to assault on her due to stick. The Medical Officer had denied the possibility that the said injuries are possible due to fall. Besides the medical opinion by the Medical Officer as regards the deceased, the Medical Officer had opportunity to see injuries while conducting the postmortem over Chhaya, the deceased.

15. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Honourable Apex Court in the case of Smt. Nagindra Bala Mitra and vs. Sunil Chandra Roy and another, reported at 1960 SCR (3) 1 wherein the Honourable Apex Court observed that "*the value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony, because it may*

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establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tatooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person." Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

16. Sydeny Brandon in his book 'Violence in Family' wrote, "Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one's family, for it is there that accident, murder and violence are likely to occur".

17. The present case is one more example of such type of violence in the house. The deceased is the wife of the accused. It is alleged that the incident had occurred as the deceased had not prepared meat properly due to which the accused got annoyed and he gave blow of sticks on her person and she succumbed to death.

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18. The prosecution placed implicit reliance on the evidence of PW3 informant Sunil Suresh Shendre who is neighbour as well as relative of the accused. PW3 Sunil had lodged the First Information Report of the incident. The prosecution also relied upon evidence of accused's and deceased's daughter PW4 Kajal Suresh Shendre. Both these witnesses have not supported the prosecution case. PW4 Kajal has totally left the loyalty towards the prosecution. PW3 informant Suresh Shendre had supported the prosecution case to some extent. He deposed that on the day of the incident, when he was at home, he heard the quarrel between the accused and his wife as the deceased cooked the meat of pig and burnt it. The daughter of the accused came to his house and informed him about the quarrel and, therefore, he went to the house of the accused. He brought Kajal to his house. He also lodged the report about the said incident which is at Exhibit-28 and printed First Information Report is at Exhibit-29. During his cross-examination by the defence, he admitted that there used to be verbal spats between the accused and his wife, otherwise they were behaving nicely with each other. He also admitted that the deceased was suffering from Epilepsy and she used to fall on the ground due to stroke of Epilepsy. He also admitted that on the day of the incident also she suffered injuries due to stroke of Epilepsy. Thus, the defence has

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tried to prove the defence that the deceased had sustained injuries due to fall.

19. As observed earlier, accused's and deceased's daughter PW4 Kajal has completely left the loyalty towards the prosecution. The evidence of accused's neighbour PW5 Tarabai Suresh Shendrealso also shows that she left the loyalty towards the prosecution and initially not supported the version of the prosecution, but during cross-examination by learned APP before the Trial Court she admitted that Kajal informed her that there was quarrel between the accused and the deceased. The accused who is her father had beaten her mother and, therefore, she died. Again during the cross-examination by the defence, this witness admitted that no such disclosure was made to her by Kajal.

20. PW6 Indubai Suresh Raut is also residing in the neighbourhood of the deceased and the accused. During her testimony, initially, she had left the loyalty towards the prosecution, but during cross-examination by learned APP before the Trial Court she admitted that the accused is in a habit of consuming liquor. The accused is hot tempered and quarrelsome nature. He had quarreled with her, her brother, and neighbour Tarabai and also beaten her. She further admitted that the accused used to beat his wife Chhaya

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under the influence of liquor. She further admitted that due to the nature of the accused she as well as other people residing in that locality were afraid of him. She further admitted during cross-examination by learned APP before the Trial Court that she and her husband witnessed that the accused was abusing and beating his wife Chhaya on account of burning of meat cury. She assigned the reason that as she was afraid of the accused, she did not visit the house of the accused. It further came in her cross-examination that on the next day she saw Chhaya, the deceased, lying on the floor facing towards sky on the mat in a dead condition. She also witnessed the injuries over the lips and stomach. She further testified that when Tarabai (PW5) enquired with Kajal, the daughter of the accused and the deceased, Kajal disclosed that her father had abused and beaten her mother with kick and fist blows on account of burning of meat cury. Thus, from the evidence of PW6 Indubai it reveals that though initially she has not supported the prosecution version, during cross-examination by learned APP before the Trial Court, she narrated the entire incident. Learned counsel for the defence also cross-examined this witness and it is admitted by her that there were good relationship between the accused and the deceased. She also admitted that as they were sleeping in night, they did not hear any sound of quarrel. Thus, though the defence

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has cross-examined this witness, the material incident that there was quarrel in the night of the incident between the deceased and the accused, was not shattered.

21. Thus, the prosecution had relied upon these four witnesses informant PW3 Sunil Suresh Shendre (PW3); accused's and deceased's daughter PW4 Kajal Suresh Shendre; accused's neighbour PW5 Tarabai Suresh Shendre, and accused's neighbour PW6 Indubai Suresh Raut. Though these four witnesses have not completely supported the prosecution case, but entire core of their evidence established that the accused was in a habit of drinking liquor and he used to beat the deceased under the influence of liquor. It further proved by the prosecution that on 3.9.2015 in the night hours there was quarrel between the deceased and the accused as the deceased has not prepared meat properly. It is further proved that the deceased was abused and assaulted by the accused. Learned counsel Shri S.G.Joshi for the appellant vehemently submitted that all these four witnesses have not supported the prosecution case. Besides their evidence, there is no other evidence on record to show that it is the accused who is the perpetrator of the crime. As already observed that though these witnesses have not supported entirely, however their evidence corroborates the prosecution case that at the relevant time of the

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incident the deceased was abused and assaulted by the accused and subsequently she was found dead.

It is well settled that the law on the treatment of a hostile witness is that the evidence of such a witness need not be completely rejected only because such witness was turned hostile. The Court must, however, be circumspect in accepting their testimony and, to the extent possible, look for its corroboration.

22. Admittedly, in the present case, there is no direct evidence in the nature of eyewitness. The entire prosecution case is rested on circumstantial evidence. The circumstances on record show that the deceased is the wife of the accused and at the relevant time they were residing together. There was quarrel between the deceased and the accused on the night of the incident. The accused was seen with the deceased abusing and assaulting her. Subsequently, she was found dead for which no explanation is put forth by the accused. The death of the deceased as homicidal one is established by the prosecution.

23. Now, it has to be seen whether the prosecution succeeded in seeking corroboration to the fact that the death of the deceased was caused in the house wherein the deceased and the accused were residing together. The prosecution adduced the

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evidence of pancha on spot PW1 Vilas Bhajandas Mungmode. He testified that on the request of the police, his superior deputed him to act as a pancha. He visited the alleged spot of the incident. In his presence panchanama regarding the spot of incident was drawn. The spot of the incident is situated at the house of Suresh Madhukar Shende i.e the accused. He further observed that there were burnt utensils containing meat cury. The prosecution case itself shows that the alleged incident had occurred as the deceased has not prepared the meat cury properly. The Investigating Officer has also collected the house extract of the accused which shows that the accused and the deceased are owners of the house. PW8 Ashwin Bangre and PW9 are photographers who obtained photographs of the spot of incident. PW11 is Investigating Officer who also narrated about the spot of incident. Thus, the prosecution has proved that the alleged incident has occurred in the house of the accused.

24. Another circumstance, on which the prosecution has relied upon, is Chemical Analyzer's Reports. The Trial Court has not marked the Chemical Analyzer's Reports giving it exhibit numbers. In view of Section 293 of the Code of Criminal Procedure, the Chemical Analyzer's Reports are admissible in evidence being the reports of the Government Scientific Experts. The Chemical

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Analyzer's Reports show that the incriminating articles wooden log, bangle pieces, clothes of the deceased, and clothes of the accused are sent for its analysis. As per the Chemical Analyzer's Reports, articles saree, nicker, blouse, petticoat of the deceased, and jeans pant of the accused are stained with human blood. The blood found on the clothes of the deceased is of Group "A" and the blood group on the jeans pant of the accused cannot be determined as the results are inconclusive. The Honourable Apex Court in the case of **Kishor Bhadke vs. State of Maharashtra**, reported at **2017 ALL MR 1316** held that the presence of human blood on clothes recovered at the instance of the accused and mere absence of evidence regarding blood group cannot be fatal to the prosecution. But, in the present case, said incriminating circumstance that the blood is found on the clothes of the accused is not put to the accused during the statement under Section 313 of the Code of Criminal Procedure and no opportunity is given to the accused to explain the said circumstance and, therefore, the said circumstance cannot be taken into consideration and such evidence is to be ignored.

25. Admittedly, the present case is rested on circumstantial evidence. The law is settled regarding the circumstantial evidence that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established. Those

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circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. The strong circumstances in the present case against the accused is that the death of the deceased was caused in the matrimonial house when she was residing with the accused. The Honourable Apex Court in the case of Trimukh Maroti Kirkan v. State of Maharashtra, reported at (2006) ALL MR (Cri) 3510 held that if an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. It is further held that where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. Section 106 of the Evidence Act, in such

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circumstances, comes into play. When the prosecution proves the chain of circumstances, burden is shifted on the accused to explain or offer explanation regarding the death of the deceased. The said Section, lays down Rule that when the accused does not throw any light upon facts which are especially within his knowledge, and which could not support any theory or hypothesis compatible with innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.

26. We have considered submissions and appreciated the evidence on record on the principles laid down by the Honourable Apex Court. In that context, the evidence of informant PW3 Sunil Suresh Shendre, accused's neighbour PW5 Tarabai Suresh Shendre and another neighbour PW6 Indubai Suresh Raut is very important. Their evidence shows that prior to death of the deceased, the deceased and the accused were seen together. The accused was seen abusing and assaulting the deceased. The quarrel was going on as the deceased had not prepared the meat properly. Subsequently, the deceased was found dead. The accused has not offered any explanation. The spot of the incident shows that stick was lying there which was seized by the police. Informant PW1 had witnessed the burnt utensils containing meat cury which supports the story of the prosecution. The medical evidence also

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shows that the deceased died due to the injuries that is external and internal sustained by her. The defence of the accused that the deceased fallen on the ground due to Epilepsy stroke is ruled out by the Medical Officer and the defence has not produced any document to show that the deceased was suffering from Epilepsy. The subsequent conduct of the accused is also material that he has not informed the incident to the police or the relatives immediately. Thus, the entire evidence on record sufficiently shows that the death of the deceased was caused in the house of the accused due to the assault by the accused on account of not preparing the food properly.

27. Learned counsel Shri S.G.Joshi for the appellant submitted that though the case of the prosecution is taken as it is, there was no intention to kill the deceased. He submitted that whatever happened was in a spur of moment. It was a sudden fight and a sudden quarrel and, therefore, the case of the accused covers under exception 4 of Section 300 of the Indian Penal Code and, therefore, the case of the accused covers under the culpable homicide not amounting to murder.

28. So far as the intention of the accused is concerned, the nature of intention has to be gathered from surrounding

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circumstances like kind of weapon used, the amount of force used, the part of the body hit and the circumstances attendant upon death. Admittedly, direct evidence would not be available to gather the intention as the intention is the inner compartment of that person's mind.

29. Whether the case of the accused, covers under exception 4 of Section 300 of the Indian Penal Code, a sudden fight and a sudden quarrel is to be seen from circumstances. Admittedly, there was quarrel between the accused and the deceased on account of meat which was not properly cooked and the accused lost his self control and assaulted the deceased. The exception 4 of Section 300 of the Indian Penal Code covers acts done in a sudden fight. The said exception deals with a case of the prosecution not covered by the first exception, after which its place would have been more appropriate. Exception 4 of Section 300 of the Indian Penal Code deals only if there is heat of passion, the person acts while losing his self control. It deals with cases in which a blow may have been struck or some provocation given in the origin of the disputes. A sudden fight implies a mutual provocation. The help of exception 4 of the said Section can be invoked if death is caused, (a) without premeditation, (b) in a sudden fight, (c) without the offender having taken undue advantage or acted in a cruel or

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unusual manner, and (d) the fight must have been without the person killed.

30. Here, in the present case, the facts on record show that there was a sudden quarrel and there was no premeditation. The injuries sustained by the deceased were not on the vital parts of her body. Admittedly, there were six injuries on the person of the deceased which were in the nature of contusions and internal injuries. The weapon like stick was used. The evidence nowhere shows that the accused acted in a cruel manner. The weapon like stick was used in the assault.

31. The culpable homicide is defined in Section 299 of the Indian Penal Code whereas murder is defined in Section 300 of the Indian Penal Code. The every act of homicide falls within the definition of culpable homicide in Section 299 of the Indian Penal Code. As per Section 300 of the Indian Penal Code, homicide is murder. However, there are five exceptions in the said Section and those exceptions lay down the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the Indian Penal Code. Therefore, it has to be seen whether there was

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intention or knowledge with which the act was done and what are circumstances.

32. Admittedly, in the present case, the quarrel was taken place on a simple reason that the deceased had not prepared the meat properly and the accused lost his self control and gave a blow of stick on the person of the deceased. For considering, whether the case would fall under Section 302 of the Indian Penal Code or lesser and for finding out nature of intention one has to take into consideration the kind of weapon used. Admittedly, the accused had not prepared for the assault. When he saw that the deceased had not prepared the food, he abused and assaulted her. The weapon used in the present case is a lethal weapon like stick. In this view of the matter, we find that the appellant had knowledge that injuries could cause death of the deceased. There was an intention on the part of the the accused to cause injuries. However, the accused had not taken undue advantage or has not acted in a cruel or unusual manner. Considering the factual scenario in the background of the position in law, inevitable conclusion is that the act of the accused would cover under exception 4 of Section 300 of the Indian Penal Code and, therefore, the case of the accused would cover under Section 304 Part-I of the Indian Penal Code.

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33. In view of the discussion above, no case for acquittal is made out. However, the case of the appellant would cover under Section 304 Part-I of the Indian Penal Code and, therefore, the appeal deserves to be allowed partly and the appellant need not undergo imprisonment for life and his sentence can be modified by ordering that he shall undergo rigorous imprisonment for ten years. Hence, we proceed to pass following order:

ORDER

- (1) The criminal appeal is allowed partly.
- (2) Judgment and order dated 20.7.2017 passed by learned Additional Sessions Judge, Chandrapur in Sessions Case No.111/2015 stands confirmed to the extent of imposing conviction of the offence punishable under Section 304(I) of the Indian Penal Code.
- (3) Judgment and order dated 20.7.2017 passed by learned Additional Sessions Judge, Chandrapur in Sessions Case No.111/2015 stands quashed and set aside to the extent of imposing sentence to suffer imprisonment for life.
- (4) Instead, the appellant is sentenced to suffer rigorous imprisonment for ten years.

Judgment

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(5) No orders as regards payment of fine amount.

(6) The appellant is entitled for set-off under Section 428 of the Indian Penal Code.

(7) As is permissible in law, fees to be received by learned counsel Shri S.G.Joshi appointed for the appellant from the High Court Legal Services Sub Committee at Nagpur are quantified.

The criminal appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

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