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**(2013) 04 BOM CK 0129**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 49 of 2008**

Dinesh Bhaguji Kandhare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 04-04-2013

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 300, 302, 304

**Citation :** (2013) 4 ABR 478 : (2013) ALLMR(Cri) 3094

**Hon'ble Judges :** V.K. Tahilramani, J;P.D. Kode, J

**Bench :** Division Bench

**Advocate :** Arfan Sait, for the Appellant; P.S. Hingorani for State, for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

V.K. Tahilramani, J.—This appeal is directed by the appellant-original accused against the judgment and order dated 2nd November, 2007 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 523 of 2005. By the said judgment and order, the learned Sessions Judge convicted the appellant u/s 302 of Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs. 2000/-, in default, rigorous imprisonment for four months. The prosecution case briefly stated, is as under:-

The deceased Reshma was residing along with her husband and children including PW-9 Sagar at Survey No. 112, Sutardara, Kothrud, Pune. On 14th April, 2005 at about 7.30 p.m. a quarrel took place between the appellant and his wife Reshma. The appellant stabbed his wife Reshma with a knife in the back. Reshma was admitted to the hospital where she was declared dead. PW-1 Ananta who was residing next to the house of the appellant lodged F.I.R. Exh. 17. Thereafter investigation commenced. In due course the case was committed to the Court of Sessions.

2. Charge came to be framed against the appellant u/s 302 of Indian Penal Code.

The accused pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Additional Sessions Judge, Pune, convicted and sentenced the appellant as stated in para 1 above. Hence, this appeal.

3. We have heard the learned Advocate for the Appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant caused death of his wife Reshma by stabbing her in the back with the knife.

4. The conviction is mainly based on the evidence of PW-9 Sagar who was the son of deceased Reshma and the appellant. He has stated that on 14th April, 2005 at about 7.30 p.m. the appellant Dinesh was demanding money from his mother for drinking liquor but on her refusal, the appellant stabbed his mother in the back with the knife. Then his mother was taken to the hospital. The prosecution has also relied on the evidence of PW-1 Ananta who is the neighbour of the appellant and deceased. The evidence of PW-1 Ananta shows that the appellant made an extra-judicial confession to him that on account of his wife Reshma giving utensils to Sutar he had given knife blow to her.

5. Mr. Sait submitted that, even if it is accepted that the act of the appellant of assaulting his wife with the knife resulted in her death, the case would not fall u/s 302 of Indian Penal Code, but it would fall u/s 304 of Indian Penal Code. He pointed out that the evidence on record shows that a quarrel was going on between the appellant and his wife Reshma which has been deposed by PW-1 Ananta who was residing in the house adjoining that of the appellant and the deceased. Mr. Sait drew our attention to the evidence of PW-1 wherein he has stated that on 15th April, 2005 at about 10.30 p.m. he heard the sound of quarrel from the house of the appellant and the deceased. One Vaishali told him that there was quarrel and he should come out of the house. Then he came out of his house and he saw that Reshma was sitting in front of the house. There were blood stains on her saree. The appellant told him that his wife Reshma had given the utensils to one Sutar, therefore, he had given the knife blow to her. Mr. Sait further submitted that the incident occurred during a sudden quarrel which is borne out from the evidence of PW-1 Ananta and PW-3 Chandrakant and in the course of sudden quarrel the appellant assaulted his wife Reshma with the knife on the back. He drew our attention to the evidence of PW-3 who has stated that on 15th April, 2005 a quarrel was going on between the appellant and his wife at about 9.30 p.m. Then he heard the shouts of Reshma shouting "save, save". He submitted that the appellant assaulted Reshma with the knife on the back which is seen from the evidence of PW-11 Dr. Ganesh who performed the postmortem. Dr. Ganesh has stated that, on examination of dead body of Reshma, he found the following injuries on her person:-

(a) Stab injury over left upper back 20 cm. Above iliac and 7 cm. To left paraspinal region. Measuring 17 cm. Length gaping horizontal with sharp margins and lateral angle sharp and medial angle rectangular, reddish in colour opening in left chest cavity. Blood oozing from the injury.

(b) Abraded contusion over medial aspect of right elbow 4 x 5 cm. Reddish.

6. To bring a case within Exception 4 to Section 300 of I.P.C. all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 of Section 300 of I.P.C. is not defined in I.P.C. It takes two to make a fight. Heat of passion requires that there must be no time for passion to cool down. However, for the application of Exception 4 it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken any undue advantage or acted in a cruel or unusual manner. The fact that the accused had given only one blow of knife shows that he did not take any undue advantage or acted in a cruel or unusual manner. Looking to the fact that the incident occurred during a sudden quarrel and the nature of the injury, we are of the considered opinion that the case would fall u/s 304 Part II of I.P.C.

7. Considering the evidence on record, we are of the view that Exception 4 to Section 300 of I.P.C. applies to the facts of the present case and the appropriate conviction would be one u/s 304 Part II of I.P.C. Hence, conviction u/s 302 of I.P.C. is set aside, instead, the appellant is convicted u/s 304 Part II of I.P.C. for which custodial sentence of 8 years and fine of Rs. 1000/-, in default, simple imprisonment for one month, would meet the ends of justice.

8-9. Appeal is allowed to the aforesaid extent.

10. Office to communicate this order to the concerned prison Authorities and to the Appellant who is in jail.

11. Writ be expedited. Before parting with the judgment, we must record our appreciation for Mr. Arfan Sait appointed from High Court Legal Services Committee, Bombay to represent the appellant. We found that he had meticulously prepared the matter and he has very ably argued the matter. We quantify legal fees to be paid to him by the High Court Legal Services Committee at Rs. 2400/-. The said fees be paid to Advocate Mr. Sait within four months from today.