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**(2018) 01 BOM CK 0064**  
**In the Bombay High Court**  
**Case No : 69 of 2017**

Gajanan Dadarao Chavan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 17-01-2018

**Acts Referred:**

<a href=3863>Code of Criminal Procedure, 1973</a>, <a href=3863-313>Section 313</a> - Power to examine the accused  
<a href=1767>Indian Penal Code, 1860</a>, <a href=1767-302>Section 302</a>,  
<a href=1767-498-A>Section 498-A</a>, <a href=1767-304- II>Section 304- II</a> - Punishment for murder

**Citation :** (2018) 01 BOM CK 0064

**Hon'ble Judges :** R.K.Deshpande, M.G.Giratkar

**Bench :** Division Bench

**Advocate :** A.M.Jaltare, T.H.Udeshi

**Final Decision :** Partly Allowed

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## Judgement

1. Appellant has assailed the Judgment of conviction awarded by Sessions Judge, Akola in Sessions Trial No.15 of 2014 for the offence punishable under Section 302 of the Indian Penal Code, by which he is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for six months.

2. The case of prosecution against the appellant, in short, is as under :

The appellant was married with deceased Asha 15 years prior to the date of incident. Deceased delivered two female children

from the appellant. Appellant was always beating and ill-treating her. On the day of incident i.e. on 24.10.2013, at about 7.00 p.m., appellant quarreled with his deceased wife Asha. He beat her and pulled her in the courtyard. She was unconscious. Brother of appellant namely Santosh informed Police Patil. He took her to Government Hospital, Akola. She was admitted in the hospital. She was given medical treatment. On 1.11.2013, she died.

3. Father of deceased namely Vitthal Mansing Solanke (PW-1) came to know about admission of his daughter in the hospital. Therefore, he went to Government hospital, Akola. She disclosed him about beating by the appellant. Thereafter, he went to Police Station, Borgaon Manju and lodged report. On the basis of report, crime was registered against the appellant for the offence punishable under Section 307 of the Indian Penal Code.

4. During medical treatment, deceased Asha died on 1.11.2013. Therefore, offence punishable under Section 302 of the Indian Penal Code was added. PSI Vinod Trimbakrao Deshmukh (PW-7) investigated the crime. After complete investigation, filed charge sheet before the Court of Judicial Magistrate, First Class. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions at Akola.

5. Charge was framed by the trial Court at Exh.2. Same was read over and explained to the appellant. He pleaded not guilty and claimed to be tried. His defence appears to be of total denial.

6. Prosecution has examined following witnesses :-

- a. Vitthal Mansing Solanke (PW-1) (Exh.9).
- b. Surajsing Hirasing Verma (PW-2) (Exh.12).
- c. Santosh Dadarao Chavan (PW-3) (Exh.25).
- d. Usha Santosh Chavan (PW-4) (Exh.26).
- e. Preeti @ Anchal Gajanan Chavan (PW-5) (Exh.29).

f. Syed Numan Hussaini (PW-6) (Exh.39).

g. Vinod Trimbakrao Deshmukh (PW-7) (Exh.,41).

h. Shankar Vitthal Shelke (PW-8) (Exh.56).

I. Santosh Ramesh Panchabhai (PW-9)(Exh.57).

7. Learned trial Court recorded statement of appellant under Section 313 of the Code of Criminal Procedure. The trial Court heard prosecution and defence and came to the conclusion that the appellant has committed murder of his wife. Therefore, the appellant is convicted for the offence punishable under Section 302 of the Indian Penal Code and sentence is awarded to him, as stated above. Appellant came to be acquitted for the offence punishable under Section 498-A of the Indian Penal Code.

8. Heard Mr.A.M.Jaltare, learned Counsel for the appellant.

He has submitted that there was quarrel between the appellant and his deceased wife. During the quarrel, appellant could not control himself and he beat his wife. There was no any serious injury on the person of deceased. As per the post mortem conduct by Dr.Syed Numan Hussaini (PW-6), cause of death was head injury and it's complication. Learned Counsel pointed out evidence of Dr. Hussaini and submitted that all the injuries found at the time of post mortem were of minor nature. There was no any intention on the part of appellant to commit murder of his wife.

9. Learned Counsel Mr.Jaltare has submitted that, admittedly, quarrel took place in the house. If the appellant had any intention to kill deceased Asha, he would have killed his wife by any sharp weapon available in the house. It appears that there was quarrel and in the quarrel, the appellant beat her by fist. Therefore, it is not a case of murder punishable under Section 302 of the Indian Penal Code. Learned Counsel has submitted that, at the most, the case is proved against the appellant for the offence punishable under

Section 304-II of the Indian Penal Code. At last, prayed to allow the appeal.

10. Heard learned A.P.P. Ms T.H.Udeshi for the Respondent/State. She has pointed out evidence of Santosh Dadarao Chavan (PW-3) and Usha Santosh Chavan (PW-4) and submitted that appellant beat deceased mercilessly. Their evidence is corroborated by Syed Numan Hussaini (PW-6). Learned trial Court rightly convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code. Hence, the appeal is liable to be dismissed.

11. Perused the evidence on record. Evidence of Vitthal Mansing Solanke (PW-1) shows that he has stated about ill-treatment by appellant to his deceased wife. He was not present at the time of incident. His evidence appears to be of hearsay nature. Appellant is acquitted by the trial Court for the offence punishable under Section 498-A of the Indian Penal Code. Evidence of Santosh Chavan (PW-3) and Usha Chavan (PW-4) are material. Santosh Chavan (PW-3) is the brother of appellant and Usha Chavan (PW-4) is wife of Santosh Chavan (PW-3). Deceased Asha was sister of Usha Chavan (PW-4).

12. As per evidence of Santosh Chavan (PW-3) and Usha Chavan (PW-4), on 24.10.2013, at about 7 p.m., appellant and deceased Asha were only in their house. They heard noise of their quarrel. Therefore, they came out. They heard noise of beating in the house. Appellant pulled Asha and threw her out of house. She was admitted by Santosh Chavan (PW-3) in the Government hospital at Akola. From the perusal of City Scan Report (Exh.58), it is clear that no any injury was found on the head of deceased. Report of City Scan is as under :

"IMPRESSION : NECT HEAD & visualised CERVICAL SPINE STUDY REVEALS : NO

SIGNIFICANT ABNORMALITY. "

13. From the perusal of evidence of Dr.Syed Numan Hussaini (PW-6), it is clear that, on 1.11.2013, post mortem was conducted and he found the following eight injuries on the dead body of deceased :

I) Brownish colour with scab formation, contused abrasion over left sub-mandibular region, of size 05 cm. X 02 cm.

II) Two abrasions over right lateral aspect of neck and middle part of neck with scab formation of brownish colour, one below another, of size 04 cm. X 01 cm. and 03 cm. X 01.2 cm. respectively.

III) Multiple scratch abrasions, crescent shaped over right sub-mandibular region, lateral aspect of neck of size varying from 01 cm. X 01 cm. to 01 cm. X 0.5 cm.

IV) Three abrasions, with brownish colour scab formation, one below another on lateral aspect of neck, of size 02 cm. X 01 cm., 01 cm. X 01 cm. and 0.5 cm. X 01 cm. respectively.

V) Abrasion with brownish scab formation over right knee, of size 02 cm. X 01 cm.

VI) Abrasion of size 02.5 cm. X 01 cm., with brownish scab formation, over upper aspect of right leg.

VII) Brownish scab at left anterior superior iliac - spine of size 02 cm. X 02 cm.

VIII) Linear abrasion over medial and lower aspect of left thigh, of size 03 cm. X 0.5 cm., brownish colour.

These injuries were ante-mortem in nature.

14. From the perusal of City Scan Report and injuries found on the dead body, it is clear that appellant has not caused any severe injuries to the deceased. The incident took place on 24.10.2013 and deceased died on 1.11.2013. All this evidence shows that it was not the intention of the appellant to kill his wife.

15. Evidence of Santosh Chavan (PW-3) and Usha Chavan (PW-4) clearly shows that there was quarrel between the appellant and his wife. During the quarrel, he beat his wife and therefore, she sustained injuries as stated in the Post Mortem Report.

15. The injuries caused by the appellant to the deceased were not severe. If the appellant had any intention to kill the deceased, he

could have killed her by any sharp weapon available in the house.

There is no dispute that appellant and deceased were only in the house. Therefore, prosecution failed to establish that appellant had intention to kill the deceased. Act of accused comes under Section 304-II of Indian Penal Code. Learned trial Court has not taken into consideration all these material evidence on record and wrongly convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code. He is liable for conviction under Section 304-II of Indian Penal Code. Hence, we pass the following order.

// ORDER //

The Criminal Appeal is partly allowed.

Impugned Judgment is quashed and set aside.

Appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code. Instead, he is convicted for the offence punishable under Section 304-II of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years.

Record and proceedings be sent back to the trial Court.