

**(2010) 09 BOM CK 0184**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 118 of 2005**

Shiv Katare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision :** 28-09-2010

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302

**Citation :** (2010) 09 BOM CK 0184

**Hon'ble Judges :** A.R. Joshi, J;A.H. Joshi, J

**Bench :** Division Bench

**Advocate :** Ashwin Wasnik, for the Appellant; N.S. Khubalkar, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.R. Joshi, J.—Present criminal appeal is preferred by sole accused against the judgment and order of conviction dated 4th January 2005 delivered by 2nd Adhoc Additional Sessions Judge, Nagpur in Sessions Case No. 187 of 2003. By the said impugned judgment and order, present appellant/accused was convicted for the offence punishable u/s 302 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 1000/-, in default, to suffer simple imprisonment for three months.

2. Rival arguments were heard. Also perused the documentary as well as oral evidence which was led before the trial Court. Also perused the reasoning given by the trial Court while convicting the appellant for the offence punishable u/s 302 of the Indian Penal Code.

3. Prior to appreciating the arguments advanced on behalf of the appellant, certain factual position and admitted circumstances can be narrated in order to ascertain the perspective of the present case.

4. Present appellant/accused and deceased Laxmi married about six years prior to the incident of assault on Laxmi causing her instantaneous death. Out of the

wedlock, one daughter, then aged about three years, was born and Laxmi was carrying eight months" of pregnancy. Almost, it is an admitted position that the appellant/accused had no noticeable avocation of livelihood and was also a habitual drunkard and was remaining at home for days together under the influence of liquor. This was the main ground between the appellant and his wife Laxmi for quarrel. Apparently, deceased Laxmi was insisting on the appellant to desist away from liquor and to have some livelihood. However, appellant was not giving any heed and in fact, was ill-treating the deceased. The fateful incident occurred on 24th December 2002. In the afternoon at about 03.00 pm or so, deceased Laxmi had been to the house of one Smt. Ratna (PW 2), a neighbour, for taking a broom. Accused followed her, then armed with a spearhead blade in his hand. He accosted his wife in front of the house of one Fulanbai staying in the same vicinity and started assaulting her. Noticing the commotion, neighbours informed the relatives of deceased Laxmi and as such, her parents and brother started going towards the spot. In the mean-time, appellant/accused severally assaulted his wife Laxmi with the help of spearhead blade. He gave stab blows on right and left side of her chest and also on her arms causing severally bleeding injuries. Probably, the very first injury which was caused on the left side of her chest near 6th inter-costal space was fatal blow which punctured heart of the deceased. Laxmi fell on the ground in a pool of blood and apparently died instantaneously as when she was admitted in Mayo Hospital, she was declared dead.

5. The incident of assault was witnessed by PW2 Ratna, a neighbour and also PW4 Shyam, another neighbour. PW4 Shyam, after witnessing the incident of assault on Laxmi, tried to apprehend appellant/accused. Sensing trouble of being arrested on the spot, appellant rushed on PW4 Shyam in order to assault him. However, PW4 Shyam Managed to escape the assault and gave a call to the relatives of Laxmi. In the mean-time, appellant/accused tried to run away from the spot. However, he was apprehended by PW6 Yashwant who happed to reach near the spot after noticing the commotion. PW6 Yashwant saw the appellant/accused running away from the spot with spearhead blade in his hand. PW6 Yashwant started chasing the accused. By that time, accused threw away the spearhead blade in the near vicinity. PW6 Yashwant managed to apprehend the accused and detained him in custody in front of the house of one Kumar in the same locality. After some time, police reached the spot and took the appellant/accused in custody. That time, clothes of the accused were blood stained. The spearhead blade which was thrown by the accused, was also taken charge of by the police. At this juncture, it must be mentioned that the said spearhead blade is a sword stick of about 12" blade length and used by the appellant/accused to assault his wife Laxmi on her chest.

6. One Shashikala, sister of the deceased lodged FIR on the same day. During investigation, panchanama in respect of scene of offence, inquest panchanama and post-mortem were conducted. Clothes of the accused and weapon used by him and other articles such as clothes of the deceased were sent for chemical

analysis. At this juncture it must be mentioned that the clothes of the accused and of the deceased were stained with blood of human origin and of "B" group whereas the blood of the accused which was subsequently taken and sent for analysis showed inconclusive result. So far as blood sample of the deceased is concerned, it showed that the blood of the deceased was of "B" group. Again, at this juncture, it must be mentioned that the spearhead blade used by the accused in the assault had blood of human origin. However, the blood group was inconclusive as per C.A. Report. C.A. Report regarding weapon and clothes of deceased and accused is exhibit 20; C.A. Report regarding blood group of deceased is exhibit 19 and C.A. Report regarding blood of accused is exhibit 18.

7. In view of the above factual position, in nutshell, it can be said that it is a case in which the present appellant/accused was apprehended on the spot with his clothes stained with blood having "B" group and the said incident of assault has been witnessed by two eye witnesses PW.2 Ratna and P.W.4 Shyam whereas P.W.6 Yashwant saw the appellant/accused running away from the spot with spearhead blade in the hand and said P.W.6 Yashwant apprehended the appellant/accused and gave him in the custody of police who then arrived on the spot.

8. During trial before the Additional Sessions Judge, Nagpur in all eleven witnesses were examined. However, so far as present appeal is concerned, the substantive evidence of P.W.2 Ratna; P.W.4 Shyam and P.W.6 Yashwant coupled with that P.W.1 Shashikala is of much importance. So also, the spot panchanama and panchanama regarding recovery of the clothes of the accused is of much importance.

9. Apart from the above evidence, documentary evidence so far as postmortem report is concerned and substantive evidence of P.W.11 Dr. Prakash Mohite is of much importance as during the arguments, an attempt has been made on behalf of the appellant/accused to dilute the said charge from Section 302 IPC to any other less serious section of the Penal Code. Again, at this juncture it must be mentioned that the injuries sustained by the deceased as detailed in the post-mortem report and also as narrated by P.W.11 Dr. Prakash Mohite, can be reproduced for ready reference. The said injuries are as under:

Injury No. 1: Stab injury over left sixth intercostal space 6 cms. Left to midline of size 2 cm x 1 cm x cavity deep. Angles acute.

Injury No. 2: Incise wound over right eight intercostal space 13 cm. Right to midline transverse (portion between i.e. two ribs) 1 cm x ? X skin deep.

Injury No. 3: Chop wound over middle aspect of lower third of left arm/6 cm x 5 cm x muscle deep over line skin flap partly separated.

Injury No. 4: Abrasion over back left side of T-ten (10) means (thoracis vertebra) Transverse 7 cm x 3 cm reddish brown.

Injury No. 5: Abrasion below right knee lateral aspect 3 cm x 1 cm reddish brown.

Injury No. 6: Contuse abrasion 4 cm below right knee 1 cm x 1/2 cm reddish brown.

10. Considering the substantive evidence of eye witnesses P.W.2 Ratna and P.W.4 Shyam and also the evidence of P.W.6 Yashwant, there was no much argument on the merits of the case of prosecution so far as involvement of appellant/accused is concerned. What is much stressed by learned Advocate Mr. Ashwin Wasnik for appellant is, whether the appellant was intending to commit murder of his own wife. It is submitted during the arguments that even if accepting the involvement of the appellant in the assault of his wife, it cannot be said that he intended to kill his wife. However, except such bare arguments, there is nothing brought to our notice even to accept such submission on preponderance of probability. On the contrary, the admitted factual position and the manner in which assault was inflicted on deceased Laxmi indicate that the accused must be held guilty for the offence punishable u/s 302 of the Indian Penal Code and nothing less. In other words, the overwhelming circumstances which are established against the appellant/accused rule away any other possibility to accept the submissions on behalf of the appellant that he was just to scare his wife and was not intending to kill her or for that purpose, not knowing that his such act would cause the death of his wife. The overwhelming circumstances are such that as firstly, the weapon used by the appellant/accused is spearhead blade having blade length of 12". It is established by way of evidence of P.W.2 Ratna, P.W.4 Shyam and P.W.6 Yashwant that accused chased his wife Laxmi when she was out on that fateful afternoon to fetch a broom from her neighbour. That time, the accused was having a sword stick in his hand and he assaulted her on chest causing severely bleeding injuries. Definitely, it is not a case, though suggested on behalf of the appellant, that he was only intending to cause her scare. Also, there was no reason for him to follow his wife and even to cause any assault on her muchless to scare her on that afternoon. During the arguments, it is also submitted that it was the conduct on the part of Laxmi to frequently insist upon her husband/the appellant to go for a job, has caused the irritation and as he was under the influence of liquor, was out of his mind and had indulged in the assault on his wife. Such reasoning given on behalf of the appellant cannot be accepted even for the sake of argument as it would not be a natural conduct of any person to severely assault and cause stab injuries to his wife if she happened to insist on him to be on right track and insist on him to have some job to earn the livelihood. As such, even if such conduct of insistence on the part of Laxmi and asking her husband to have some noticeable job and to desist from the habit of drinking liquor is accepted, it cannot be ground for the appellant to lose his mind and to severely assault his wife. In the result, the only argument advanced on behalf of the appellant as to appellant not intending to cause death of his wife, cannot be accepted. More so, when the nature of injuries as detailed above are of such a severity that, in fact, on account of the first injury itself, there was stab wound reaching to the heart of the deceased, probably causing her instantaneous death.

11. In view of the above observations and overwhelming material for implication of the appellant in the offence of murder, there is nothing to view the present matter differently and consequently, there is nothing to bring down the offence to any other lesser offence.

12. Consequently, there are no merits in the present appeal and the same is accordingly dismissed.