

**2023 LiveLaw (SC) 585 : 2023 INSC 662**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
B.R. GAVAI; J., J.B. PARDIWALA; J.**

AUGUST 01, 2023.

CRIMINAL APPEAL NO. 2232 OF 2023 [Arising out of SLP (Crl.) No. 9777 Of 2022]

**NIRMALA DEVI versus STATE OF HIMACHAL PRADESH**

**Indian Penal Code, 1860; Section 302, 304 Part 1 - Conviction altered from S 302 to S 304 Part 1 - the possibility of the appellant causing the death of the deceased while being deprived of the power of self-control, due to the provocation on account of the deceased cannot be ruled out - The weapon used in the crime is a stick which was lying in the house, and which, by no means, can be called a deadly weapon - it will also be necessary to take into consideration the background in which the offence took place. There used to be persistent quarrels between the deceased and the appellant. (Para 13)**

(Arising out of impugned final judgment and order dated 23-05-2022 in CRLA No. 46/2018 passed by the High Court of Himachal Pradesh at Shimla)

*For Petitioner(s) Mr. Aditya Dhawan, Adv. Mrs. Kiran Dhawan, Adv. Mr. Bhuwan Raj, AOR*

*For Respondent(s) Mr. Samir Ali Khan, AOR Mr. Karan Kapur, Adv. Mr. Abhishek Gauta, Adv. Mr. Vivek Kumar, Adv.*

**J U D G M E N T**

**B.R. GAVAI, J.**

1. Leave granted.
2. The appeal arises out of the final judgment and order dated 23<sup>rd</sup> May 2022 passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 46 of 2018, thereby upholding the judgment and order dated 1<sup>st</sup> December 2017 passed by the Additional Sessions Judge-II, Solan (hereinafter referred to as 'Trial Court'), vide which the present appellant – accused Nirmala Devi was convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced to undergo imprisonment for life.
3. When the matter first came up before us, we had issued notice vide order dated 7<sup>th</sup> November 2022, for the limited issue of converting the sentence from Section 302 IPC to either part I or II of Section 304 IPC. Vide the same order, we had directed the appellant – accused to be released on bail on such terms and conditions as may be imposed by the Trial Court.
4. As such, the short issue before us is as to whether, in the facts and circumstances of the present case, the sentence imposed upon the appellant – accused under Section 302 IPC can be converted into part I or II of Section 304 of IPC. 5. The facts as may be necessary to answer the aforesaid issue, shorn of unnecessary details are as follows:  
5.1 On 26<sup>th</sup> May 2015 at about 10:30 AM, the appellant – accused telephonically informed the police that her husband Mast Ram, the deceased, had been missing from the previous night. On the same day at 7:00 o'clock in the morning, the appellant – accused had found her husband lying

in the courtyard of the house stained with blood. Thereafter, she along with her children, daughter Priyanka (PW-1) and son Vinod - accused No. 2, took his body to a room in the house, where he died at about 10:00 AM.

**5.2** After the said phone call, a police party reached the spot, examined the scene of the incident, took photographs, and transported the body of the deceased to hospital for medical examination and post-mortem.

**5.3** On the very same day, one Ghungriya Ram, nephew of the deceased, who was working in the Home Guard and was on official leave, received a phone call at about 1:30 PM informing him that his maternal uncle Mast Ram had died in the morning and his dead body was at Civil Hospital, Arki. He rushed to the hospital whereupon he saw the dead body of his uncle in the mortuary. He noticed injury marks on the head, arms and legs of the body.

**5.4** Thereafter, he filed a complaint on the same day, stating therein that his aunt, i.e. the appellant – accused and her son Vinod had strained relations with the deceased, and they often used to quarrel. On the basis of the complaint, an FIR No. 36 of 2015 was registered at Police Station Arki, Dist. Solan (H.P). The post-mortem was conducted on 27<sup>th</sup> May 2015, and on the same day, both the accused, i.e. Nirmala Devi and Vinod were arrested.

**5.5** During their interrogation, both the accused revealed that their relations with the deceased were poor, and that the deceased Mast Ram was of a quarrelsome nature and used to beat them regularly. On account of such behavior of the deceased, they were residing in separate houses. On the fateful day, Priyanka, the deceased's daughter, had demanded some money from her father to enable her to attend a National Cadet Corps Camp, but on the refusal of the deceased to provide the money, an altercation had ensued between the appellant – accused and deceased. During the course of the quarrel, the appellant – accused gave several blows with the stick to the deceased. As a result, Mast Ram died.

**5.6** It was also disclosed during interrogation that both the accused had taken off their clothes after the incident and concealed them in a carry bag under the bed box. Thereafter, appellant – accused led the police to the bed box in her house from where the carry box was recovered containing a lady shirt Ext. P-10, salwar Ext. P-11, a male lower Ext. P-12 and vest Ext. P-13, which were taken into possession in the presence of two police officers. As per the disclosure statement of the accused No. 2 - Vinod, the *danda* used to inflict blows was recovered from the *gali* where the house of the accused was situated.

**5.7** The post-mortem and viscera report indicated that the deceased had died due to hemorrhagic shock and oedema of brain. Thereafter, on completion of the investigation, a chargesheet was filed against the accused under Sections 302 and 201 of the IPC read with Section 34 of the IPC. The accused pleaded not guilty, and the trial commenced thereafter.

**5.8** The Trial Court, vide judgment and order dated 1<sup>st</sup> December 2017, in Sessions Trial No. 2-AK/7 of 2016/2015, convicted the appellant – accused under Sections 302 and 201 of the IPC and sentenced her to undergo imprisonment for life, whereas Vinod – accused No. 2 was acquitted from all the charges levelled against him.

**5.9** Thereafter, an appeal was preferred by the appellant – accused before the High Court which was dismissed vide the impugned judgment and order.

**6.** We have heard Mr. Aditya Dhawan, learned counsel appearing for the appellant and Mr. Karan Kapur, learned counsel appearing for the respondent State.

7. Since there is no dispute with regard to homicidal death of the deceased, we do not find it necessary to refer to the medical evidence.
8. As stated hereinabove, the short question that falls for consideration is as to whether the conviction under Section 302 of the IPC would be required to be maintained, or whether the case would fall under a lesser offence.
9. Recently, this Bench, speaking through Justice J.B. Pardiwala, in the case of ***Anbazhagan v. State represented by the Inspector of Police***<sup>1</sup>, delivered on 20<sup>th</sup> July 2023, has succinctly explained the fine distinction between the cases that would fall under Section 302, Section 304 Part-I and Section 304 Part-II of the IPC. In the present case, the conviction under Section 302 IPC has been passed by the trial court and maintained by the High Court solely on the basis of testimony of Priyanka (PW-1).
10. Priyanka (PW-1) is the daughter of the deceased and the appellant. The trial court and the High Court have questioned the veracity of the evidence of Priyanka (PW-1). If the testimony of the prosecution witnesses is found to be unreliable, then the benefit ought to have been in favour of the deceased.
11. In any case, even after a careful scrutiny of the testimony of Priyanka (PW-1), we find that it will be difficult to sustain conviction under Section 302 of the IPC.
12. It is not in dispute that the relations between the deceased on one hand, and the other members of the family consisting of the appellant, wife of the deceased, his son, the original accused, and Priyanka (PW-1) daughter of the deceased, on the other hand, were not cordial. If the testimony of PW-1 is read as a whole, it would reveal that her father and mother often quarreled. PW-1, in her evidence, has stated that the deceased Mast Ram fractured the leg of her mother during one of such quarrels, and a criminal case was also pending against him for the said offence. Her testimony would show that her father was residing separately in the old house whereas the three other members were residing separately. It is stated that, on the date of the incident, she got up at about 07.00 o'clock in the morning and asked her father to give Rs.500/- as she wanted to take part in the NCC Camp. Her father refused to provide the said amount. PW-1 narrated the said incident to her mother. Her mother asked her father to give the said amount to her. Even then, the father did not provide the said amount. Thereafter, a quarrel started between her father and mother. Her mother gave blows with a stick on the head and legs of her father. Her father sustained injuries, which led to his death.
13. It is to be noted that the weapon used in the crime is a stick which was lying in the house, and which, by no means, can be called a deadly weapon. Therefore, the possibility of the appellant causing the death of the deceased while being deprived of the power of self-control, due to the provocation on account of the deceased not agreeing to pay Rs.500/- to PW-1, cannot be ruled out.
14. We further find that it will also be necessary to take into consideration the background in which the offence took place. There used to be persistent quarrels between the deceased and the appellant. In one of such incidents, the leg of the appellant was fractured by the deceased, and a case was already pending against him for the said offence.

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<sup>1</sup> 2023 SCC OnLine SC 857

**15.** In our considered view, the appellant is entitled to benefit of doubt, inasmuch as the offence committed shall fall under Exception I of Section 300 IPC. Thus, the conviction under Section 302 IPC needs to be altered into Part-I of Section 304 IPC.

**16.** In the result, the appeal is allowed. The conviction of the appellant is altered from Section 302 of the IPC to Part-I of Section 304 of the IPC. The appellant has already been incarcerated for a period of almost 9 years, and, therefore, we find that the sentence already undergone would serve the ends of justice. The bail bonds of the appellant shall also stand discharged.

**17.** Pending application(s), if any, shall stand disposed of.

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