

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.844 OF 2016

Manoj Jaynarayan Yadav

516, Contractor Building, 1st Floor,
Near Post Officer, New Mill Road, Kurla (W)
Mumbai-400 070
(At present lodged in Nashik Central Prison)

...Appellant

V/s.

The State of Maharashtra
(Through Kurla Police Station)

... Respondent

NILAM
SANTOSH
KAMBLE

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Mr.Sujit M. Satam, Appointed Advocate, for the Appellant.
Mrs.G.P. Mulekar, APP for Respondent-State.

**CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

RESERVED ON : 27th JULY 2023

PRONOUNCED ON : 26th SEPTEMBER 2023

JUDGMENT : (Per Shri.Shivkumar Dige)

. Appellant-Original Accused has impugned Judgment and Order passed by the Additional Sessions Judge, City Civil and Session Court, Mumbai, whereby Appellant is convicted for the offence punishable under Section 302 of Indian Penal Code ('IPC' for short) and is sentenced to suffer life imprisonment and to pay fine of Rs.5,000/- in default, to suffer simple imprisonment, (S.I.) for one month. The Appellant is convicted for the offence punishable under Section 201 of the IPC and directed to suffer

imprisonment for one year and to pay fine of Rs.1,000/- and in default, to suffer SI for 15 days. Appellant is also convicted for the offence punishable under Section 182 of IPC and directed to suffer imprisonment for one month and to pay fine of Rs.100/- and in default, to suffer SI for 7 days. All the sentences are directed to run concurrently.

2. Brief facts of the case are as under:-

On 23rd April 2007, Appellant, Manoj Yadav lodged complaint with Kurla Police Station, stating that, he himself and Kisanlal (Deceased) were servants in house of Khayanchand Jain. He was working there from 25th June 2006. Whereas deceased Kisanlal, had joined since last fifteen days.

2.1 On that day, at about 3.00 p.m. no one was present in house except Appellant and Kishanlal, at that time two unknown person's barged in the said flat, for theft, they assaulted Kishanlal with knife, he died on the spot, they tried to assault Appellant and ran away.

3. Upon receiving report, police registered crime against two unknown persons. During the investigation it was revealed that, Appellant had filed false FIR and in fact, he himself had committed murder of Kisanlal. Police arrested the Appellant, as per his Disclosure Statement seized knife used in the crime.

4. After completion of investigation charge-sheet was filed against the Appellant. The case was committed to the Additional Sessions Judge, City Civil Court, Mumbai. Charges were framed against the Appellant

under above referred sections. He pleaded not guilty and claimed to be tried. To prove its case prosecution has examined seventeen witnesses. Statement of Appellant under Section 313 of Cr.PC. was recorded. His defence was of total denial.

Considering evidence on record and submissions of both learned Advocates, the trial Court has convicted Appellant as referred above.

5. We have heard Mr.Sunjit M. Satam, Appointed Advocate, learned counsel for the Appellant and Mrs.G.P. Mulekar, APP for the Respondent-State.

6. It is prosecution's case that, the Appellant had murdered deceased, as deceased had threatened the Appellant that, he would tell his secrets to landlady, due to it Appellant got angry and killed deceased.

7. The prosecution case is based on circumstantial evidence. It has come on record that, when incident had happened, at that time only Appellant and deceased were present in the said flat.

8. P.W.-1 Mahesh Niwatkar, PSI, Kurla Police Station, has stated that, on 23rd April 2007 he received message from control room that, one person resident of Flat No.516, first floor, Contractor Building, New Mill Road, Kurla, Bombay was being assaulted by some persons, therefore he went to the spot of incident. In the bed room he found one person was lying in the pool of blood, and was dead. He called private photographer and took photographs of it. At that time, Appellant was present there and

Appellant told him that, two unknown persons having turben and beard, assaulted the deceased with knife and one of them also tried to assault him and followed him in hall kitchen. On the statement of the Appellant this witness registered FIR against two unknown person which is at Exhibit-9. This witness examined the flat and seized articles, lying there.

9. PW.-2, Mrs.Aruna Jain has stated that, she was residing on the second floor and her in-laws were residing on first floor. It was duplex flat. There are internal stairs from flat of her in-laws to her flat. As Appellant wanted to go his native place her in-laws had engaged new servant i.e. deceased. On 23rd April 2006 at about 3.00 p.m. she heard noise of knocking, hence she came out from the bedroom and saw that, the Appellant holding frying pan in his hand was rapidly coming to her room by stairs. She was frightened. Hence, she closed the door, then Appellant shouted “maar-dala maar-dala”. Then she piped through window. She opened the door and took the Appellant in her room. At that time, he was frightened. She noticed blood stains on the frying pan. This witness called her husband on mobile and told about the incident. Thereafter her husband and some persons came to incident spot.

In cross-examination this witness stated that, she opened the door as Appellant was continuously knocking the door. She saw from window and ascertained that nobody was with the Appellant, hence she opened the door. The said act was completed within one minute. From the evidence of this witness it reveals that, incident had happened on first floor

and Appellant had come to second floor flat, holding frying pan in his hand and his clothes were having blood stains.

10. PW-3-Dharamchand Jain, has stated that, on 23rd April 2007 at about 3.45 p.m. he received information about incident from his nephew. He immediately went to his house. His father's flat was situated on first floor, hence he went on the first floor, but door of the flat was closed from inside. He knocked the door and gave call. But there was no response. Then by the back side stairs he went to second floor where his nephew Lalit stays. At that time, one Chappalwala and his driver Nandlal were with him. While going to second floor on the way the Appellant met them. The Appellant told them two unknown persons killed the deceased. The face of Appellant was stained with blood, and he had bleeding injury on the finger of his hand. Then they went to house of PW-2 from back stairs, they noticed blood stains on the stairs and on the floor. In the hall nobody was found. They checked all rooms of flat. In one room they found dead body of deceased. There was cut injury on his neck and the body was in the pool of blood. There were foot prints of blood in the hall and in the room of Prakash and from it was appearing that, one person had effected entry in the said room. From the staircase of first floor to ground floor there were no footprints and blood stains. In cross-examination he denied the suggestion that, from the ground floor stairs one can proceed to second floor.

11. From the evidence of this witness it reveals that, immediately after the incident he reached the incident spot and he found that main door of the flat where incident happened was closed from inside. The Appellant had informed the police that, two assailants barged in the flat and killed the deceased by knife and there was pool of blood when one assailant pulled Appellant in room, where deceased was murdered, Appellant had slipped due to pool of blood and his clothes were soaked in said blood. Thereafter one assailant chased him in hall and kitchen and tried to assault him. It is significant to note that, this witness has specifically stated that, there were footprints of only one person found in hall and other rooms. Had there been two assailants the footprints of other persons must have been appeared in the hall and other rooms or the assailant who followed the Appellant in hall, kitchen and other room. It has also come on record that, footprints and blood stains were not appearing on the stairs of first floor going towards ground floor. It shows that no one had gone from the staircase. The main door was locked from inside. The evidence of this witness is corroborated by PW-5 Chappalwala, Vinayak Suryavanshi and PW-6 Nandlal Pal, driver of Khamanchand Jain. P.W.4 Lalit Jain and P.W.-7 Chandraprakash Jain, have stated the same facts. PW.-8 Devilal Gujar home servant of P.W.4, was residing in his flat, has stated that about 5 to 6 days prior to the incident the Appellant had informed this witness that, deceased was not discharging his duties properly hence he told this witness to advice deceased in Marwadi language, but this witness did not advice deceased.

In cross-examination this witness denied the suggestion that there was dispute between him and Appellant. From the evidence of this witness it reveals that, Appellant was not happy with deceased.

12. It has come in the evidence of PW-10 Firoz Ismail Maniar that, Appellant made disclosure statement in his presence and as per his disclosure statement he produced one knife used in crime, hidden by him in tin sheet cabin of AC machine attached to bed room. The panchnamma is at Exhibit-26 and 27.

13. It is significant to note that, CA reports at Exhibit-41 to 44, shows blood stains found on the knife, which was recovered at the instance of Appellant was of AB group, which was the blood group of deceased.

14. PW-17 Dilip Shivram Yadav, Investigating Officer has stated that, after lodging report by the Appellant, FIR was lodged against two unknown persons but in investigation it revealed that, the murder of deceased was committed by the Appellant.

15. PW-12 Dr. Sunil Mohanrao Jawale, who conducted postmortem of the deceased has stated that, he found following injuries on the dead body of the deceased.

(i) An incised wound above thyroid cartilage 15 X 4 X 4 (cavity deep) Margins clean cut with minimal contusion at edges, reddish adematous cut on sternocleidomastoid both sides, carotids, jugular and other neck structures with anterior pharyngeal wall and posterior pharyngeal wall.

(ii) An incised wound just below injury No.1 separated by a thin layer 2 mm. Finding same as above. Both horizontal.

(iii) A stabbed wound at apigastiran, oblique one end acute, bevelling, direction upward margins clean cut, reddish oedematous, on cut section surround tissue congested and injury communicate at liver medial border external injury. 1 and 1½ x 1 x cavity deep narrowed at liver. Liver shows purporting injury oblique.

(iv) Incised wound left thumb medial 1½ x ¼ x ¼ reddish regular edimaters.

15.1 Defense has not disputed about homicidal death of deceased, it proves that, the death of deceased was homicidal.

16. It is contention of learned counsel for the Appellant that, there was no eye witness the incident, except Appellant. The story told by the Appellant that, at the time of assaulting Appellant the unknown assailant had broken the TV and glasses of window was noticed by the prosecution witnesses, when they visited the flat. It proves that, the story told by the Appellant was true, but it is not considered by the Trial Court.

17. The learned counsel for Appellant has relied on the decision of Apex Court in the case of ***Nandu Singh V/s. State of Madhya Pradesh***¹.

18. In our view, it appears from the evidence on record that, it was a scene created by the Appellant to save himself from the crime of murder of deceased. It has come in the evidence of witnesses that, main door of the said flat was locked from inside. There was no other entry to the said

¹ Criminal Appeal No.285 of 2022 (Arising out of Special Leave Petition (Crl.) No.7998 of 2021 decided on 25.02.2022

flat. The question remains when there was only one entry to go to the flat where incident had happened, how the two assailants entered in the said flat. It has come on record that, he was present with the deceased in the said flat. No explanation was given by the Appellant in this regard. Appellant is bound to explain the said fact as contemplated under Section of 106 of Evidence Act. Appellant had informed that, when he was watching assault on deceased, by two unknown assailant's, at that time one assailant pulled him in bedroom, due to pool of blood he slipped and his clothes were soaked in blood. As there was pool of blood in that room, the clothes and feet of assailants must have been soaked by blood of deceased. The Appellant had stated that one assailant followed him in other rooms to assault him. It appears from record that, blood footprints of only one person were appearing in the flat where the incident was happened. Had there been other two persons their footprints must have been appeared in the said flat or the bed room in which incident happened. No footprints were found on stairs going towards ground floor from first floor. The flat where the incident happened is situated in crowded place and many shops and adjacent buildings are there. No one noticed two assailants coming in the building nor going outside. When the witnesses heard the shouts of the Appellant they immediately rushed towards the building. It means the witnesses were present near the building when incident happened, but no one noticed two assailants. It proves that, Appellant is the only person who had killed the deceased.

19. It is the contention of the learned counsel for the Appellant that, the two assailants had tried to assault him, due to which injury was caused to the finger of his hand. It has come on record that, Appellant had sustained injury to his finger and was referred for medical examination to Nagpada Police Hospital. The medical report of injuries caused to Appellant is at Exhibit-45. It shows there were abrasions on chin of Appellant extending from lower lip and abrasion just above neck and right calavice. In this report it is mentioned that blood oozing from the wound and all the above injuries were fresh injuries caused within 12 hours. The injury Nos.2 and 3 mentioned in the report are caused by human nails. It is not the case of the Appellant that, the said assailant had come in contact with him. The said nail injuries over his face must have been caused to him by the deceased, while attempting to flee from the clutches of the Appellant. The incise wound on his left index finger, was simply, skin deep. It is not grievous injury, it shows it is self inflicted injury.

20. It is the contention of the learned counsel for the Appellant that, the injuries caused to the deceased shows that it was caused by more than one person. The Postmortem report shows that, four injuries were caused to the deceased, his throat was cut by sharp weapon. The injuries were horizontal and there was one stab injury to his liver and incise wound to his left thump. It appears that, when deceased was sleeping, Appellant had cut his throat with knife and gave stab injury. While escaping from the clutches of Appellant, deceased had caused abrasions on his face by his

nails. Moreover, it has not come on record presence of other two assailants in said flat. We do not see merit in contention that assault was made by two unknown persons.

21. It is the contention of learned counsel for the Appellant that, prosecution has not proved case against the Appellant beyond reasonable doubt but trial Court has not considered this fact. As observed above, main door of the flat where incident happened was closed from inside. There was no other entry to enter in the said flat. There were no blood footprints of other person's except one person. Abrasion's of human finger nails were found on the face of the Appellant. The said injuries were fresh injuries. The blood stains found on knife which was recovered at the instance of Appellant matches with blood group of deceased. It proves that Appellant murdered the deceased, as he was unhappy with him for the reason noted earlier.

22. We have gone through the case laws cited by learned counsel for the Appellant. The facts of cited cases and case in hand are totally different and hence not applicable to present case.

23. In view of above, we pass following order.

ORDER

Appeal is dismissed.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)