

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 28 OF 2013

1] Pandurang S/o Govind Dhage
Age 28 years, Occ : Agri
R/o Her, Tq. Udgir, Latur

2] Shankar S/o Govind Dhage
Age 24 years, Occ : Agri.,
R/o Her, Tq. Udgir, Dist.Latur.
(At present are in jail)

.. APPELLANTS
(Orig.Accused Nos.2 & 3)

Versus

The State of Maharashtra
(Copy to be served on
Public Prosecutor, High
Court of Judicature of Bombay
Bench at Aurangabad)

.. RESPONDENT

...

Shri R.N.Dhorde, Senior Counsel for appellants
Shri P.P.More, APP for respondent State

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**CORAM : P.V.HARDAS AND
N.W.SAMBRE, JJ.**

DATED : 15TH JUNE, 2015

ORAL JUDGMENT [PER P.V.HARDAS, J.] :-

The appellants/original accused nos.2 and 3
who stand convicted for offence punishable under

Section 302 r.w. 34, 307 r.w.34 of I.P.C. are sentenced to imprisonment for life and each accused to pay fine of Rs.2000/- in default of which to undergo further R.I. for one year and imprisonment for life and each accused to pay fine of Rs.2000/- in default of which to undergo further R.I. for one year, with direction that the substantive sentences shall run concurrently, by the Additional Sessions Judge, Udgir, by judgment dated 12/12/2012 in Sessions Case No.24/2007, by this Appeal challenge their conviction and sentence.

2] Facts in brief as are necessary for the decision of this Appeal can be stated thus :

P.W.13 A.S.I. Manohar Suryawanshi who was attached to Gandhi Chowk Police Station, Latur and was attached to the police chowki of the Civil Hospital, on 24/2/2007 received a M.L.C. from the hospital at about 9.20 p.m. The M.L.C. was in respect of death of

Manmathappa Vishwanathappa Mitkari. He accordingly went to the police station and on the basis of the M.L.C. registered an accidental death at Sr.No.0/2007. Inquiry of the A.D. was entrusted to P.W.13 A.S.I. Suryawanshi. The M.L.C. is at Exh.127. P.W.13 A.S.I. Suryawanshi then drew an inquest panchanama at Exh.73. He forwarded dead body for post mortem examination under the forwarding form at Exh.128. The Medical Officer issued provisional cause of death certificate. The dead body was then handed over in the custody of son of deceased under receipt at Exh.130. He forwarded all the documents under forwarding letter at Exh.131.

3] P.W.16 P.S.I. Sidheshwar Mohite who was attached to the Udgir Gramin police station, was informed on 23/2/2007 about the incident. P.W.16 P.S.I. Mohite was directed to record statement of injured and accordingly he went to the hospital. Since injured

P.W.8 Navnath was in the Intensive Care Unit, statement of Navnath could not be recorded. P.W.16 P.S.I. Mohite recorded statement of P.W.7 Ashabai wife of Navnath at Exh.107. On the basis of the statement of P.W.7 Ashabai at Exh.107, he registered offence vide Crime No.41/2007 under Sections 302,307,447,504 and 506 r.w. 34 of I.P.C. He thereafter, went to the scene of the incident i.e. village Haer. The scene of the incident was pointed out by one Mirabai and P.W.16 P.S.I. Mohite accordingly drew the scene of the incident panchanama in the presence of panchas at Exh.89. From the scene of the incident, he seized an axe and stick and also drew the sample of plain mud and blood mixed mud. He recorded statements of witnesses and arrested all the accused under arrest panchanama at Exhs. 15 to 18. He referred the accused for medical examination and also seized the clothes worn by the accused under seizure memo at Exhs.77 to 80. After receipt of the inquest panchanama and the report from

the Gandhi Chowk police station, Latur, investigation was handed over to P.W.15 P.I. Deepak Jatkar.

4] P.W.15 P.I. Deepak Jatkar who was attached to the Udgir rural police station was entrusted with the investigation of Crime No.41/2007. During custodial interrogation accused no.2 Pandurang expressed his willingness to point out the place where the sickle had been concealed. Memorandum was accordingly recorded in the presence of P.W.4 Balaji at Exh.86. The accused led the police and the panchas to his house and from a earthen pot removed two sickles which were seized under panchanama at Exh.87. The said articles are at Exhs.16 and 17. He also obtained certified copy of the judgment in R.C.C.No.142/85 under Section 324 r.w. 34 of I.P.C. and recorded statements of witnesses as well as the statement of P.W.8 Navnath. On 4/3/2007, the seized articles were forwarded to the Chemical Analyser under requisition at Exh.129.

Further to the completion of the investigation, charge sheet against accused was filed.

5] P.W.1 Dr.Dhage examined injured P.W.8 Navnath and noticed the following external injuries :

1] Contusion with abrasion on left side of chest of 3x2 cm

2] Abrasion with contusion over left arm of 4x2 cm

3] Fracture left 8th and 9th ribs.

4] Extensive comminuted fracture at bilateral high fronto parietal region with depression of fracture segments resulting into compression and invasion of superior sagittal sinus with superior sagittal sinus thrombosis with right signoid and transverse sinus thrombosis with gross cerebral edema.

6] He opined that all the injuries were possible by hard and blunt object. According to him, injuries 3

and 4 were grievous injuries. The medical certificate is at Exh.71.

7] Post mortem on the dead body of deceased Manmathappa was performed by P.W.6 Dr.Sonawane who noticed that deceased had sustained following external injuries :

1] Incised wound over right high parietal region of scalp, size 6x2.5x2cm in dimension. Linear with clean cut and everted margins. It is directed from dorsal to ventral aspect and caused by sharp edged weapon.

2] Incised wound over right knee ventrally of size 3x1.5x1.5 cm with clean cut and everted margins and caused by sharp edged weapon.

3] Contusion over left arm middle part laterally of size of 4x3 cm with swelling of subcutaneous tissues, directed from dorsal to

ventral aspect. It is associated with fracture of left Humerous middle part, grievous in nature. It is associated with laceration, muscle deep, 1x1x1/2 cm overlying upper part of contusion.

4] Contusion over forehead middle upper part of 2x3 cm in size

5] Contusion over left side chest lower axillary region with swelling of subcutaneous tissues, 6x3 cm in dimension.

6] Contusion over left side chest lower axillary region with swelling of subcutaneous tissues 5x3 cm

7] Contusion over left side lower abdomen, 3x2 cm

8] Contusion over right side fore arm middle portion laterally, 3x2 cm

9] Abrasion over right ankle joint medially of 1x1 cm in dimension.

He opined that the above injuries were anti mortem and had been caused within 24 hours prior to his death. According to him, injuries 1 and 2 were due to the sharp edged weapon while injuries 3 to 9 were caused by hard and blunt object.

He therefore, opined that deceased had died due to Hemorrhagic Shock due to multiple grievous injuries. The post mortem report is at Exh.91. Provisional death certificate is at Exh.92.

8] On the case being committed to Court of Sessions, trial Court vide Exh.7 framed charge against the accused for offences punishable u/s 302 r.w. 34, 307 r.w. 34, 447 r.w. 34 and 504 and 506 r.w. 34 of I.P.C. The accused were also charged for offence for enhanced punishment on account of previous conviction.

9] We have heard Shri Dhorde, learned Senior Counsel for the appellants and learned A.P.P. and in order to effectively deal with submissions advanced before us, it would be useful to refer to the evidence of the prosecution witnesses.

10] We may state that original accused no.1 Govind and original accused no.4 Dhanaji died during the pendency of the trial and therefore, the trial had abated as against accused nos.1 and 4. The appellants original accused nos.2 and 3 were alone tried for the said offence.

11] Prosecution has examined P.W.7 Ashabai wife of P.W.8 Navnath. Ashabai deposed that she was residing alongwith her husband, her children and her in-laws. According to her, accused no.2 Pandurang and accused no.3 Shankar are the sons of deceased accused no.1 Govind. Accused no.4 Dhanaji was also

son of accused no.1 Govind. According to Ashabai, her family owns about 20 acres of agriculture land. She further deposed that there was a dispute with the accused on account of boundaries of the field. Accused no.1 Govind had once assaulted deceased Manmathappa some time in the year 1985. Accused no.1 Govind was convicted and sentenced by the Court. After his release from jail, accused no.1 Govind had a grudge in his mind against deceased Manmathappa.

According to her on the day of the incident i.e. on 23/2/2007, at about 4 to 5.30 p.m. she alongwith her husband and deceased Manmathappa were cutting sugar cane stems for plantation. Accused nos.2 and 3 alongwith deceased accused were throwing waste agricultural produce in the land of Ashabai. Deceased Manmathappa, Navnath and Ashabai therefore went to the spot and requested the accused not to keep the waste material in the land of deceased. Accused

however, did not relent. Accused no.1 Govind took an axe while accused no.2 Pandurang held cutting (sickle), accused no.3 Shankar also was armed with a sickle, while accused no.4 Dhanaji was armed with a weapon sickle. All the accused then assaulted P.W.8 Navnath as well as deceased Manmathappa. Ashabai requested the accused not to assault the injured but the accused rushed towards Ashabai. Ashabai therefore, fled from the scene of the incident and witnessed the incident from the place where she stood. She cried out for help and on seeing arrival of others, accused fled from the scene of the incident. An autorickshaw was called for and the injured i.e. deceased Manmathappa and P.W.8 Navnath were taken to the Udgir rural hospital. Police were informed about the incident and the police recorded statement of Ashabai.

12] In cross examination, omission is elicited that she has not stated in her report that the incident had

occurred in the land belonging to the deceased. Omission is also elicited that she had not stated that she had requested the accused not to assault her husband and father-in-law. Omission is elicited that she had not stated that she was standing at "some distance". She has then admitted as correct that accused no.1 Govind (deceased) had assaulted deceased Manmathappa with axe on his head. She has also admitted that accused no.1 Govind assaulted the deceased Manmathappa with an axe on his abdomen, left hand, back and right knee. She has also admitted that accused no.1 Govind assaulted P.W.8 Navnath by blunt side of the axe on the head of Navnath. She has admitted that the incident would not have occurred if she and the deceased had not gone towards the accused and obstructed them from stacking waste material.

13] Prosecution has examined P.W.8 Navnath son of deceased Manmathappa and husband of P.W.7

Ashabai. P.W.8 Navnath deposed that on 23/2/2007 at about 5 p.m. he was in the agricultural land alongwith deceased and Ashabai cutting sugar cane for plantation. He further deposed that the accused were throwing agricultural waste and therefore, Ashabai and Manmathappa requested the accused not to stack the waste material in the land of deceased. Accused rushed at deceased Manmathappa and assaulted deceased Manmathappa as well as P.W.8 Navnath. According to him, his wife Ashabai cried out for help. Navnath fell on the ground and became unconscious due to the injuries. He has admitted that the statement was recorded by the police during investigation.

14] P.W.1 Dr.Dhage in cross examination has admitted that injuries 1 and 2 were simple injuries. He has also admitted that fracture was possible on account of fall on stones.

15] P.W.6 Dr.Sonawane in cross examination has admitted as follows :

“It is true that if blow is landed with a sickle then it would cause a puncture wound. It is true that width of both these weapons is hardly 1 to 2 mm. It is true that width of weapon corelates with the width of injury generally. It is true that width of Koyata and sickle would not co relate with the width of injuries Nos.1 & 2. It is true that injury No.1 and 2 would co relate with the upper part width of the axe article No.18. It is true that injuries Nos.1 & 2 are not possible by Koyata and sickle. It is true that amongst these three weapons injuries No.1 and 2 must have been caused by axe article No.18 only.

16] Mr.Dhorde, learned Senior Counsel for the appellants has urged before us that the medical evidence of P.W.6 Dr.Sonawane completely rules out

use of the sickles with which appellants are alleged to be armed. It is further urged before us by the learned counsel for the appellants that evidence of Ashabai indicates that deceased accused no.1 Govind had assaulted Navnath with a blunt side of the axe. Thus all the injuries sustained by the deceased Manmathappa as well as by P.W.8 Navnath were caused by accused no.1 Govind and accused no.4 Dhanaji. The learned Senior Counsel has therefore urged before us that presence of the appellant at the scene of the incident becomes doubtful and as such the appellants are entitled to be given benefit of doubt. The learned A.P.P. has supported findings arrived at by the trial Court.

17] Perusal of the evidence of P.W.6 Dr.Sonawane certainly indicates that none of the injuries sustained by the deceased can be caused by sickles wielded by the accused no.2 Pandurang and accused no.3 Shankar. Dr.Sonawane has not been asked if the

injuries sustained by the deceased were possible by blunt side of the sickle. In the absence of such evidence, it would be wholly improper for the Court to surmise that the appellant had used the sickle from its blunt side. Evidence of P.W.1 Dr.Dhage as well as evidence of P.W.7 Ashabai indicate that it was accused no.1 Govind who had caused injuries to Navnath from the blunt side of the axe. Navnath has not sustained any injuries caused by sickle. In the face of this evidence therefore, it becomes clear that the appellants have not participated in the incident at all and have not caused any injuries either to deceased Manmathappa or P.W.8 Navnath. There is always a tendency on part of the witnesses to exaggerate the incident and to falsely rope in as many accused as is possible. This appears to be the case in respect of present appellants. We find it unbelievable that if the appellants were armed with sickle they would not have caused any injuries to the deceased and Navnath. No injuries by sickle were

caused either to the deceased or P.W.8 Navnath. Presence of the appellants at the scene of the incident itself becomes doubtful and the appellants would be entitled to be given benefit of doubt.

18] Though prosecution had examined P.W.9 Karuna, P.W.10 Prabhu, P.W.11 Tatyaraao and P.W.14 Ramesh as eye witnesses, the said witnesses did not support the prosecution and were declared hostile. Even the report of the Chemical Analyser does not show the presence of blood on the sickle. The report of the Chemical Analyser at Exh.123 indicates that no blood was found on these two sickles which were seized at the behest of accused no.2 Pandurang. The appellants therefore in our opinion are entitled to be given benefit of doubt.

19] Accordingly, Criminal Appeal is allowed and

the conviction and sentence of the appellants/original accused nos.2 and 3 viz. Pandurang s/o Govind Dhage and Shankar s/o Govind Dhage is hereby quashed and set aside and they are acquitted of the offences with which they were charged and convicted.

20] Fine if paid be refunded to them. Since appellants are in jail, they be released forthwith, if not required in any offence.

[N.W.SAMBRE,J.]

[P.V.HARDAS,J.]

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