

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

CRIMINAL APPEAL NO. 65 OF 2013

Hanumant @ Maruti @ Anna @ Bapu
Kondiba Pawar
Age 45 years, Occ-
Vadzire, Tal.Parner, Dist.Ahmadnagar
At present R/o Wathar tal Kothar
Tq,Koregaon, & Dist.Satara

.. APPELLANT
(Accused in Jail)

Versus

State of Maharashtra
Through P.S.Parner
Dist.Ahmednagar
(Copy to be served upon the
A.P.P. Of Bombay High Court
Bench at Aurangabad

.. RESPONDENT

...
Shri Anil P. Basarkar,Adv. (Appointed) for appellant
Shri G.R.Ingole,APP for respondent State
...

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

DATED : 15TH JUNE, 2015

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

The appellant who stands convicted for offence punishable under Section 302 of Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs.500/- by the Sessions Judge, Ahmednagar by

judgment dated 24/8/2012 in Sessions Case No.305/2011, by this Appeal questions the correctness of his conviction and sentence.

2] The facts in brief as are necessary for the decision of this Appeal may be stated thus:

P.W.5 Police Head Constable Balasaheb Salunke who in August 2009 was attached to Police Station Parner and was on duty on 30/8/2009 recorded the report of Pushpa at Exh.22. On the basis of report of Pushpa at Exh.22, he registered an offence vide Crime No.306/2009. Further investigation was then entrusted to P.W.6 A.P.I. Gopal Bhavsar.

3] P.W.6 A.P.I. Gopal Bhavsar who was also attached to police station Parner was entrusted with the investigation of Crime No.306/2009 under Section 302 of I.P.C. On being entrusted with investigation, he proceeded to the scene of the incident and drew the inquest panchanama of the dead body of deceased Asha in the presence of panchas at Exh.14. The dead body of deceased Asha was thereafter referred for post mortem examination to the rural hospital at Parner.

P.W.6 A.P.I. Gopal Bhavsar then drew scene of the incident panchanama in the presence of panchas at Exh.13. From the scene of the incident, he seized an axe, sickle and a quilt stained with blood. He also drew panchanama of the articles which were found and seized them from the scene of the incident. He recorded statements of P.W.2 Dropadabai and others. He searched for the accused but the accused could not be found. On 8/9/2009, seized articles were referred to the Chemical Analyser at Nashik alongwith Police Constable Kedari with requisition at Exhs.24 and 25. Since appellant was absconding, charge sheet came to be filed under Section 299 of the Criminal Procedure Code.

4] Post mortem on the dead body of deceased Asha was performed at Rural Hospital at Parner. As per post mortem report at Exh.15, deceased Asha had sustained Contused Lacerated Wound 25cm x 15 cm x 10 cm depth at neck on right side below mandible. According to P.W.3 Dr.Deshmukh, he had also found that external carotid arteries were cut as well as jugular veins were cut. He therefore, opined that the cause of death was due to (1) cardio respiratory failure due to extensive blood loss from external carotid arteries (2) stoppage of

respiration and aspiration pneumonitis due to cutting of trachea below larynx in cut throat injury.

5] On the case being committed to Court of Sessions, the trial Court vide Exh.2 framed charge against the appellant for offences punishable under Sections 302, 504 and 506 of I.P.C. The accused/appellant denied the guilt and claimed to be tried. Prosecution in support of its case examined six witnesses. The defence of the appellant was of denial. The trial Court upon appreciation of the evidence convicted and sentenced the appellant as aforesaid while acquitting him for offences punishable under Sections 504 and 506 of I.P.C.

6] We have heard Mr.A.P.Basarkar, learned counsel representing the appellant in this Appeal and who has very ably argued the Appeal on behalf of the appellant. We have also heard learned A.P.P. representing the State. In order to effectively deal with the submissions advanced before us by learned counsel for the parties, it would be appropriate to deal with the evidence of the prosecution witnesses.

7] P.W.2 Dropadabai, mother of deceased Asha is

the sole eye witness to the incident. P.W.2 Dropadabai deposed that her daughter Asha was married to the appellant. The appellant had been married earlier and has children from his first wife. The appellant was residing near the house of Dropadabai. In respect of incident, Dropadabai deposed that on the day of the incident at about 11.30 to 11.45 p.m. she heard a cry from the house of deceased Asha, therefore, alongwith Pushpa and others, reached to the scene of the incident. On reaching the house of Asha, she noticed the appellant coming out of the house and fleeing from the scene of the incident. The Police Patil and the police arrived thereafter. In cross examination she has admitted that a light was burning near the house of Asha. Though P.W.2 Dropadabai has been extensively cross examined, nothing has been elicited in the cross examination which would affect the credibility of P.W.2 Dropadabai.

8] Learned counsel for the appellant has urged before us that P.W.2 Dropadabai is the solitary eye witness to the incident and conviction can be based on the solitary testimony of the eye witness only if the Court finds the evidence to be wholly reliable. Counsel for the appellant has also urged before us that the incident had occurred

at about 11.45 p.m. and on account of darkness it would not have been possible for Dropadabai to have identified the appellant. It is also urged before us that P.W.2 Dropadabai is a reliable witness and consequently the Court should accept her evidence without corroboration. Learned APP has urged before us for dismissal of the appeal by contending that the evidence of P.W.2 Dropadabai is a relative and her relation with deceased Asha would be no ground to disbelieve her evidence.

9] We have adverted to the evidence of P.W.2 Dropadabai and we find that despite extensive cross examination, nothing has been elicited in her cross examination. The appellant was seen coming out of the house where he was living alongwith deceased Asha. The appellant then fled from the scene of the incident leaving the dead body of deceased Asha in the house. The evidence of the Medical Officer corroborates that deceased Asha had died a homicidal death on account of the injuries sustained either by an axe or a sickle. The axe and sickle were also found at the scene of the incident. The evidence of Dropadabai undisputedly establishes the presence of the appellant at the scene of the incident. Though the question of abscondance of

the appellant cannot be taken into consideration nor can any inference for guilt be drawn, the presence of the appellant at the scene of the incident immediately after the incident in our opinion is a circumstance which incriminates the appellant.

10] A conviction can be based on the testimony of a sole witness and law does not require that the testimony should be corroborated. The testimony of a witness can be classified into three categories (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. The evidence of P.W.2 Dropadabai indicates that she is wholly reliable witness and therefore, the Court need not insist on corroboration to the testimony of P.W.2 Dropadabai. A reference can usefully be made to the judgment of the Supreme Court reported in **AIR 1957 S.C. 614 Vadivelu Thevar V/s The State of Madras**. We find testimony of P.W.2 Dropadabai to be wholly reliable.

11] Though P.W. 2 Dropadabai is a related witness, in the sense that she is mother of deceased Asha, her evidence cannot be disbelieved on that score alone. The evidence of relative or related witness would put the Court on its guard and would entail a close scrutiny of

the evidence of the said witness. On such scrutiny being undertaken by us, we find that implicit reliance can be placed on the testimony of P.W.2 Dropadabai. The prosecution therefore, in our opinion has proved the offence against appellant beyond reasonable doubt.

It appears that the first informant i.e. Pushpa could not be examined by the prosecution as she was reported to have died.

12] Thus taking into consideration the submissions advanced before us, we find that the prosecution has proved the offence against the appellant beyond reasonable doubt and no interference is called for in this appeal consequently this appeal is dismissed being sans merit. We quantify the fees payable to the learned counsel appointed for the appellant at Rs.5000/- (Rs.Five thousand only).

(N.W.SAMBRE,J.)

(P.V.HARDAS,J.)

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