

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD
APPELLATE SIDE JURISDICTION**

CRIMINAL APPEAL NO.: 146 OF 2000

Santosh S/o Tuljiram Shitole,
Aged: 23 years, Occu.: Student,
R/o Ambajogai.

... **APPELLANT**
[ACCUSED NO.6].

VERSUS

The State of Maharashtra,
Copy served on APP High
Court Bench at Aurangabad.

... **RESPONDENT**

Advocate for the Appellant: Mr. Joydeep Chatterji.
APP for the Respondent: Mr. N. B. Patil.
Advocate to assist APP: Mr. S.V.Nathu.

CORAM:- T. V. NALAWADE, J.
DATED:- 9th FEBRUARY, 2015.

JUDGMENT:

1. The appeal is filed against judgment and order of Sessions Case No.64 of 1995 which was pending in the Court of Additional Sessions Judge, Ambajogai, district Beed. The Appellant was charged for offence punishable under section 302 read with 34 of I.P.Code. He is convicted for the offence under section 304 Part II of I.P.Code and sentenced to suffer R.I. for 5 years and to pay a fine of Rs.500/-. Both the sides are heard.
2. The incident in question took place on 10th August, 1995 in Mochi Galli, Sadar Bazar, Ambajogai. The

complainant Homlal Choudhari was a Member of the Committee formed by his community for resolving the disputes amongst the members of the community and for taking policy decisions in the community. There are allegations that Appellant and some other persons of his side were against Homlal and they used to pick up quarrels with Homlal and the members of his family.

3. Deceased Ravichandra was working with one Orchestra unit and he was attending a tuition to learn the use of musical instruments. On the day of the incident, Homlal and his son Santosh were invited to attend a function of Bhajan in the house of Shivram Pitambre. They went there to attend the function. 15 to 20 persons were attending the function. When the function was going on, after 10.15 p.m. accused Yuvraj Pardeshi entered the house and questioned as to how the function was held there. He also asked about the President of Committee. The President was present in his house situated adjacent to the house of Shivilal and so Yuvraj went there to question him. The President did not give response to Yuvraj and so he returned to the spot in angry mood and with him present Applicant and other accused also came. They picked up quarrel with the persons who had arranged the function.

4. As the Appellant and other boys had dispute with the family of Homlal, they picked up quarrel with Homlal and they started giving abuses. To avoid further trouble Homlal and his son Santosh came out of the house of Shivlal and they started returning to home. Present Appellant and other accused then intercepted them and they started pushing and pulling Homlal and his son Santosh. At the same time, deceased Ravichandra, other son of Homlal, was returning home from the place of his tuition and he witnessed the incident. When he came forward to intervene in the incident, accused Smt. Hansabai instigated the other boys to finish Ravichandra. Then, two boys held Ravichandra, Appellant Santosh Shitole fetched Jambiya from his residential place and gave blow of the weapon on the right side of the chest of Ravichandra. Ravichandra collapsed on the spot. Blood was oozing from the injury and after seeing that Appellant and his associates ran away. Nobody dared to interfere in the incident. Homlal shifted Ravichandra to hospital but doctors declared that he was already dead. On the same night, Homlal gave report against the appellant and 6 other persons, including the aforesaid lady and the crime came to be registered for offence of murder.

5. During investigation, statements of witnesses came to be recorded. Appellant came to be arrested. As per statement given by Appellant under section 27 of Evidence Act the weapon came to be recovered from his house. Bloodstains were found on the weapon Jambiya - dagger. Spot Panchanama came to be prepared. P.M. report was collected and the charge sheet came to be filed for offence punishable under section 302 read with 34 of I.P.C. against 7 persons.

6. The trial Court framed the charge for aforesaid offence. Appellant pleaded not guilty. Prosecution examined 3 eye witnesses. All of them stuck to their versions given before police. Doctor was examined to prove that Ravichandra died due to the injuries inflicted on him during the incident. On the basis of aforesaid evidence, the trial Court has given conviction for offence under section 304 Part II of I.P.C.

7. Homlal P.W.1 has given evidence that during incident, which took place after 10.15 p.m. near the house of Shivram Pitambar, present applicant gave blow of dagger on the chest of Ravichandra and that dagger was fetched by applicant from his house. There is specific evidence that accused No.6, present appellant, had gone towards his

house and he had brought the knife Jambiya from his house. Evidence is given that due to this blow, Ravichandra sustained injury and he collapsed on the ground. He has given evidence that his other son Santosh was present on the spot and the incident of assault took place in front of the house of Shivram Pardeshi. He has given evidence that due to courage shown by the appellant and his associates the persons who had gathered for Bhajan, became frightened and ran away. The report was given by him on 10th August, 1995. The report gives necessary corroboration to the version of Homlal. His cross examination shows that the presence of Homlal or his son Santosh on the spot is not disputed and suggestions are given to the effect that Santosh had given blow of knife to accused No.5 Umesh in the incident and Criminal Case was filed against Santosh due to that incident.

8. Santosh (PW8) has given evidence against the appellant which is similar on material points to the evidence of P.W.1. His evidence also shows that appellant fetched Jambiya from his residence and then gave blow on the right side chest of Ravichandra and due to that blow Ravichandra collapsed on the ground. In the cross examination, he has tried to say that he could not see as to

who assaulted whom. This answer came to be given as there was a case against witness Santosh and there is allegation against him that he had himself attacked accused No.5 Umesh. Not much can be made out in favour of the Appellant due to such admission given by witness Santosh. On the contrary, it can be said that the defence has not disputed that Santosh was present on the spot at the time of the incident.

9. Shivram P.W.7 has given evidence that the quarrel started in his house as he had arranged the function of Bhajan but after starting of the quarrel all of them left his house. He has given evidence that when the exchange of words started between Yuvraj and Homlal other accused gathered there and then fight started between the persons of Homlal and the accused. He has given evidence in the cross examination that the fight was going on away from his house, on the road and he watched the incident from front side of his house.

10. Panch witness (P.W.10) Deepak was examined to prove the statement given by Appellant under section 27 of Evidence Act. He has deposed that on 15th August, 1995 statement was given to the effect that the knife was concealed by the Appellant. He has given evidence that

Appellant led police and Panchas to his house and from there he produced a knife which was in concealed condition. He has identified the weapon produced in the Court. Though, in cross examination, he gave some admissions and due to the admissions he was declared hostile by learned A.P.P. and he was cross examined but the fact remains that he gave evidence that there was a recovery of weapon on 15th August, 1995. On this point, there is evidence of another Panch witness Shivaji (P.W.11). His evidence shows that Appellant first gave statement and then he produced the knife from his house. His evidence is consistent with the record of memorandum of the statement and Panchanama Exhibit-82. He has identified accused/ appellant in the Court and the weapon, Article No.6 produced in the Court. There is also the evidence of Investigating Officer (P.W.14) Balasaheb on the point of recovery of weapon at the instance of present Appellant. Thus, there is convincing evidence on the recovery of the weapon at the instance of the Appellant from his house and it also gives corroboration to the versions of eye witnesses.

11. The evidence of Dr. Satyanarayan (P.W.13) shows that he conducted P.M. examination on dead body on 11th

August, 1995. He found two injuries as follows:

- 1, *Stab injury over chest, right side in the 4th intercostal space, close to the sternal margin, Horizontally situated measuring 1/2" x 1/8" elliptical, cavity deep margins regular and blood stained.*
2. *Stab injury on over back left side 8th intercostal space 4-1/2" away from the medial line. 1/2" x 1/8" horizontally and slightly obliquely situated, cavity deep elliptical margin regular and blood stained.*

12. The evidence shows that the injuries were ante-mortem in nature and first injury had caused internal injuries like Haemo Thorax left side, Haemo Thorax Right Side Mild. Lower Lob of left lung showed cut injury with regular margins over posterior aspect. There was haemo pericardium cut of heart left ventricle etc. He has given evidence that the death took place due to stab injury to chest and this injury has cut heart and lung. Thus, the injury was inflicted on right side of the chest but it had gone towards left side and it had cut the vital internal organs. He has given evidence in examination in chief that the point of the weapon produced in the court is insufficient to cause the entry of the injury. He has,

however, tried to say that due to the width of the weapon, which is less, it does not look that the weapon has caused the injury on the chest of the deceased. According to him, the middle portion of the blade is of little bit more width. He has given one more reason that the edge of the injuries were sharp and the weapon produced in the Court has sharp edge only on one side. However, he has stated in the examination in chief that the dagger point is insufficient to cause the entry of the injury and the dagger point is pointed. Though no specific evidence is given to the effect that the aforesaid injury to chest is sufficient in ordinary course of nature to cause the death it is not difficult to gather from the nature of evidence that the death was the only probable result of the injury.

13. On the dead body one more injury was found but that was on the back of the deceased. The evidence of the doctor shows that probably both the injuries were caused by the same weapon. However, the witnesses have not blamed the appellant for the second injury.

14. The learned counsel for the Appellant submitted that the evidence on the record has created a possibility that probably there was a free-fight and in the free-fight both the sides used dangerous weapons. He submitted that in

view of the nature of evidence, the sentence of imprisonment of 5 years is little bit harsh and it needs to be reduced. He also submitted that the probability that some other person had inflicted the injuries cannot be ruled out as it was night time and the evidence shows that there was no sufficient light on the spot. This Court holds that these submissions are not acceptable. The Appellant was known to both the complainant and his son Santosh. 7 persons were specifically named in the F.I.R. and the name of the Appellant was taken at serial No.6. There is other evidence which gives corroboration to the versions of eye witnesses. This Court has no hesitation to hold that recovery of weapon under section 27 of the Evidence Act is a convincing circumstance and it needs to be used against the Appellant. In view of nature of evidence of the doctor, his opinion that this weapon did not cause the injury, cannot be accepted. Further, when there is direct evidence, such discrepancy cannot affect the fate of the case. There is no need to discuss the evidence of other witnesses as they were declared hostile by the prosecution. There was no reason to father of deceased and brother of deceased to falsely implicate present Appellant in such a case. The evidence on the record

shows that the Appellant went to his residential place and from there he brought knife and that was done after starting of the quarrel. On the basis of this circumstance, the Court could have held the appellant guilty of the offence of murder also. It can be said that the Appellant is fortunate for not getting that result of the matter. In view of this circumstance, this Court holds that it is not possible to reduce the sentence further.

15. In the result, the Appeal stands dismissed. The Appellant is to surrender to the bail bonds.

[T. V. NALAWADE, J.]

Dated:09/02/2015.
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