

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.374 OF 2012

Sultan Bhikan Tadvī,
Age-40 years, Occu:Labour,
R/o-Hivarkheda, Tq-Jamner,
Dist-Jalgaon.

...APPELLANT
(Ori. Accused)

VERSUS

The State of Maharashtra

...RESPONDENT

...
Smt. Uma S. Bhosale Advocate (Appointed) for
Appellant.
Mr. K.S. Patil, A.P.P. for Respondent.
...

CORAM: A.B. CHAUDHARI AND
INDIRA K. JAIN, JJ.

DATE : 2ND SEPTEMBER, 2015

JUDGMENT [PER A.B. CHAUDHARI, J.] :

1. Being aggrieved by the Judgment and Order
dated 28th March 2012 passed by the Sessions

Judge, Jalgaon in Sessions Case No.188 of 2010, by which the Appellant - accused Sultan Bhikan Tadvī was convicted of the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- (Rupees Five Hundred), in default of payment of fine, to suffer further rigorous imprisonment for six months, the present Appeal was filed in this Court.

FACTS

2. Briefly stated, the case of the prosecution is that on 29th August 2010, in the morning, the accused assaulted Shahedabee - his wife and drove her out of the house, as a result of which, she went to her parents' place. In the afternoon, the accused went to the house of his parents-in-law and hurled abuses, upon which PW-1 Mehboob, deceased Amanulla, brothers of Shahenabee, came out of the house to inquire as to

why the accused Sultan was abusing, to which the Appellant-accused replied that he wanted money. Thereafter Rs.6000/- were given to him and he went away. On 30th August 2010, again in the morning, accused appeared at about 10.00 to 10.30 a.m. in drunken condition and again started giving abuses at the house of his parents-in-law. PW-1 Mehboob and Amanulla, the deceased, came out of the house and told the Appellant - Sultan that on the previous day, money was given to him and why he was asking for more. Upon this, accused whipped out a dagger from his waist and assaulted Amanulla causing two bodily injuries on his left hand and then stabbed him under the left armpit. Amanulla, the deceased, fell down in a pool of blood. He was brought to the hospital, but was declared dead. Mehboob then lodged report in Pahur Police Station and the crime was registered and investigated. During investigation, a dagger was discovered at the behest of the accused. The Investigating Officer recorded statements of witnesses,

collected incriminating material and thereafter filed charge-sheet. Accused Sultan was charge-sheeted for the offence of murder of Amanulla, punishable under Section 302 of the Indian Penal Code. Trial was held, trial Court heard the evidence and finally convicted and sentenced the Appellant as above. Hence this Appeal.

ARGUMENTS:

3. In support of the Appeal, learned counsel for the Appellant submitted that the learned trial Judge committed an error in relying upon the evidence of PW-1 Mehboob holding him as an eye witness, whereas, as a matter of fact he was interested witness and his testimony was liable to be discarded being interested witness. She then submitted that the learned trial Judge also perversely appreciated the evidence tendered by the prosecution and relied on the disclosure statement in relation to the dagger, when, as a

matter of fact, that discovery had failed and thus it was not reliable. The learned counsel thus submitted that prosecution has failed to prove its case beyond reasonable doubt and therefore Judgment and Order is perverse.

4. In the alternative, the learned counsel submitted that no offence of murder was actually proved, but at the most the offence of culpable homicide not amounting to murder could be concluded, and therefore, the Judgment impugned requires modification in accordance with the law, so also the sentence.

5. Per contra, the learned A.P.P. supported the impugned Judgment and Order and submitted that the Appellant, on the first day, was given money which he demanded. But then on the second day again, Appellant came back, that too armed with weapon, namely, dagger and committed murder of Amanulla. There is an eye witness to the incident,

whose testimony is reliable and the trial Court has thus rightly convicted and sentenced the Appellant. The F.I.R. was immediately lodged and the F.I.R. corroborates the testimony of PW-1 Mehboob. It is submitted that there is discovery of dagger, which was blood stained, at the behest of the Appellant - accused. At the end, therefore, the learned A.P.P. submitted that the Appeal deserves outright dismissal.

CONSIDERATION:

6. We have perused the entire evidence tendered by the prosecution before the trial Court. We have gone through the reasons recorded by the trial Judge for recording conviction. We have compared the reasons with the evidence of the witnesses of the prosecution. At the out set, we find that PW-1 Mehboob immediately lodged report Exhibit-20, to the Police Station on 30th August 2010, i.e. on the day of incident itself. Reading

of the said report and the sworn-in testimony of PW-1 Mehboob before the Court, to our mind, clearly shows that there is full corroboration by the F.I.R. to his testimony. From the evidence of Mehboob, we find that he is an eye witness of both the incidents, namely, of 29th August 2010 and on the next day i.e. 30th August 2010. He has clearly described the vicious conduct of the Appellant-accused. So far as the incident regarding murder is concerned, he has narrated the incident in Para-3 of his evidence, which we quote as under:

"3. On 30/08/2010 in the morning, at about 10.00 or 10.30, the accused again came to my parents' place in a drunken condition. He was then abusing my parents, my brother and my sister. My elder brother, my sister in law, me and my wife and other again came out of the house and asked the accused as to what has happened, why was he abusing. My elder sister Shahedabi was also there. My elder brother again asked the accused as

to why he still needed money when the previous day only he was given so much. The accused Sultan then had said that he wants more money or else, he shall kill my elder brother. He suddenly took off the dagger, which was kept inside his pant and hastened towards my elder brother. My brother, in order to ward off the assault, was running behind in the reverse direction and taking advantage, the accused dealt the blows with the dagger on the left hand at two places of my brother and then thrust the dagger under the left armpit deep inside and pulled out the same. My brother, because of an assault, fell down and we all rushed for the rescue of my brother. The accused then started running behind us. I tried to protect myself and some how managed it. My brother was bleeding profusely from the injury he suffered in his armpit. I, with the help of others, carried my brother to hospital at Wakadi, which is just 3 Kms. from Hivarkheda. The Medical Officer in the hospital at Wakadi advised for taking my brother to the hospital at Jamner and so we did. In the

hospital at Jamner, the Medical Officer having examined my brother declared that he was dead. At the time we admitted my brother to the hospital at Jamner, the Police Sub Inspector, who was present there, asked me to accompany him to Police Station so that the first information can be recorded. I therefore, accompanied the Police Sub Inspector and went to Police Station at Pahur, where I gave my report. My report was reduced by police to writing according to what I had stated. It was then read over to me and having found the same to be correct, I wrote my signature at the foot thereof. The report I gave now shown to me is the same, bearing my signature and its contents are correct. It is at **Exh.20.**"

7. We have then carefully seen the cross-examination of this witness PW-1 Mehboob and the defence suggestion that was given, that some unknown persons have assaulted Amanulla and the Appellant was falsely implicated. However, no details even suggested to this witness about the

unknown persons, nor any other evidence was brought by the defence before the Court. We are, therefore, unable to accept such type of defence. Then reading entire cross-examination, to our mind, clearly shows that the testimony of PW-1 Mehboob in Para-3 as above, has not at all been shaken in the cross-examination. It may be true that PW-1 Mehboob is interested witness, but then he is also related to the Appellant-accused. The law is trite that the testimony of interested witness is required to be looked into with caution and if there is no infirmity in the evidence of such interested witness and if the same is consistent, the same can very well be accepted even without corroboration. But in the instant case, the evidence of PW-1 Mehboob is consistent, trustworthy and not at all shaken in the cross-examination. The same is corroborated by the F.I.R., so also the discovery of dagger, which was identified by PW-1 in the Court, along with the clothes which were worn by the Appellant-accused.

We have no doubt in our mind, that the testimony of PW-1 Mehboob is required to be accepted and was rightly accepted by the learned trial Court. That being so, we must concur with the findings of fact and conviction recorded by the learned trial Court for the offence in question.

8. The next question is about nature of offence. We have seen the injury report so also the case of prosecution to find out whether the offence would fall within the term 'culpable homicide not amounting to murder'. We are unable to subscribe to the submission made by the learned counsel for the Appellant-accused. The first reason is that on 29th August 2010 when the accused had come to the house of Amanulla, the deceased, he himself was aggressive and was abusing the entire family members of Amanulla and was demanding money. An amount of Rs.6000/- was still paid to him and he then went away. But while going, he was saying that he would require more

money and if not paid, he threatened them with dire consequences and then left the place without taking his wife with him. On the next day, i.e. on 30th August 2010, he was in a drunken condition and he came with full preparation of having dagger hidden in his pocket and again started abusing the family members of PW-1 Mehboob including his brother, deceased Amanulla. Not only that he threatened that he would kill Amanulla if he was not paid money and then suddenly took out dagger from his pant pocket and went forward towards Amanulla. Amanulla who was suddenly caught in the danger, in order to save himself from assault, started running behind in reverse direction and obviously was unable to take speed and as a result, Appellant dealt the blows of dagger on his left hand at two places and finally thrust the dagger under his left armpit, deep inside and also pulled out the same. As a result, Amanulla fell down. Thus, it is very clear that Appellant has had definite intention to commit one or the other

murder and therefore he came with full preparation with having dagger in his pocket. On 29th August 2010, he did not bring dagger, but on 30th August 2010 he came with full preparation and Amanulla was in a disabled condition, tried to run run away in reverse direction. He took advantage of the said position, he being in a forward running position and assaulted Amanulla with dagger, repeatedly. We have no manner of doubt that his clear-cut intention was to commit murder of Amanulla pursuant to threat given by him on the earlier day, having come with the preparation by putting dagger in his pocket. We, therefore, reject the submission of the learned counsel for the Appellant.

9. The up-shot of the above discussion is that we find no merit in this Appeal, hence the following order:

O R D E R

I) Criminal Appeal No.374 of 2012 is dismissed.

II) Fees of appointed Advocate is quantified at Rs.4000/- (Rupees Four Thousand).

[INDIRA K. JAIN, J.]

[A.B CHAUDHARI, J.]

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