

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

CRIMINAL APPEAL NO. 403 OF 2012

1] Devidas s/o Aadinath Haleghongde,
age 42 years, occ. Service,

2] Krushna s/o Devidas Haleghongde,
age 20 years, occ. Student,

Both R/o Wahegaon,
Tq. And Dist. Nanded

...Appellants
[Orig.Accused Nos.1 & 2]

VERSUS

The State of Maharashtra

...Respondent

.....
Shri R.G.Hange, advocate for appellants
Shri M.M.Nerlikar, A.P.P. for respondent
.....

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

DATED : 8th September, 2015

J U D G M E N T : (Per A.B.Chaudhari, J.)

1] Being aggrieved by the judgment and order, dated 11.5.2012, passed by the 4th Additional Sessions Judge, Nanded in Sessions Case No. 118 of 2010 convicting both the

appellants, for the offence punishable under Section 452 r/w 34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for five years with fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month; for the offence punishable under Section 324 r/w 34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for two years; for the offence punishable under Section 307 r/w 34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for seven years with fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month; for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and sentencing them to life imprisonment with fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month; and for the offence punishable under Section 4/25 of the Arms Act and sentencing them to suffer simple imprisonment for one year with fine of Rs.500/-, in default to suffer simple imprisonment for one month, present appeal was filed by original accused/appellant nos. 1 and 2.

FACTS

2] Briefly stated, it is the case of the prosecution that appellant no.1 is the father of appellant no.2 and the complainant Meena is the wife of appellant no.1. Appellant no.1 is teacher in Zilla Parishad School at Wahegaon. The

complainant has a son appellant no.2 and a daughter Bhagyashree. Appellant no.1 developed illicit relations with one Laxmibai of village Wahegaon and married her and since then he and his son, appellant no.2 reside at Wahegaon. The brother of the complainant-Meena by name Dattatraya was murdered and first information report was lodged against the appellants. In that case, complainant Meena and her daughter Bhagyashree are the witnesses. Knowing that they are the witnesses, while under absconction in the offence of murder of Dattatraya, on 13.11.2008 at 6.30 a.m. in the morning, both of appellants came to the house of complainant Meena. Appellant no.1 had a katti and his son appellant no.2 was armed with iron pipe. They started giving blows on Meena, who shouted and tried to resist when Bhagyashree came. Appellant no.1 dealt a katti blow on the head and back of the complainant, and when Bhagyashree intervened, appellant no.1 dealt a katti blow on her hand and appellant no.2 dealt an iron rod blow. Complainant Meena fell down and then appellants went towards the house of her mother by name Laxmibai by murmuring "now they would teach lesson to old woman". Bhagyashree followed them up to the house of Laxmibai. Appellant nos. 1 and 2 entered the house of Laxmibai and assaulted her with katti and iron pipe. Hearing shouts, Bhagyashree returned home and informed accordingly to the complainant Meena. The police was informed about the

incident. Complainant was taken to the hospital in a jeep, so also her mother, who died. Offence was registered. P.I. Madan Shinde carried out investigation and arrested appellant nos. 1 and 2 on 9.12.2009, who had absconded. Discovery and memorandum panchanamas were prepared. Necessary investigation was carried out. Articles were sent for scientific investigation to the Chemical Analyser. Statements were recorded. Charge sheet was filed. Case was committed. The defence of the appellants was of total denial. Evidence was tendered by the prosecution. Upon hearing the parties and analyzing the evidence, learned trial Judge convicted both the appellants. Hence this appeal.

ARGUMENTS

3] Learned counsel for the appellants contended that the trial court committed serious error in believing the testimony of interested witnesses, namely PW 1 Meena wife of appellant no.1, who had been on cross terms with the appellants for number of years before the incident, also because she was a witness along with her daughter Bhagyashree about the alleged murder committed by the appellants. According to the counsel for the appellants, as a matter of fact, in that trial i.e. Sessions Case No. 117 of 2010 both the appellants have been acquitted for want of evidence by judgment and order, dated 11.5.2012 and thus PW 1 Meena has been hounding the appellants for

their conviction. The instant case is also filed for taking the revenge against the appellants by PW 1 Meena and supported by her daughter PW 2 Bhagyashree, who were obviously on inimical terms with the appellants.

4] Learned counsel for the appellants, therefore, submitted that evidence of both these interested witnesses ought to be rejected. There are serious infirmities in their evidence, but still the learned trial Judge landed in perversity in accepting their evidence, which is wholly illegal. Learned counsel for the appellant then contended that for the alleged murder of Laxmibai the mother of PW 1 Meena, PW 2 Bhagyashree cannot be said to be eye witness, because even according to her she has not seen the incident of assault by anybody or the appellants, because, according to her, she was outside the house and heard only shouts. Therefore, she cannot be said to be eye witness to the alleged murder of Laxmibai. Learned counsel then submitted that, at any rate, the evidence of these two witnesses being interested witnesses and having failed in earlier Sessions trial in respect of alleged murder of her brother Dattatraya, the witnesses were revengeful towards the appellants. No independent witness has been examined by the prosecution as eye witness when the incident has taken place in broad day light i.e. in the morning. Evidence of PW 12 Pralhad is not an assault-proper

and therefore, falls short of he being an eye witness. According to the learned counsel for the appellants, none of the offences for which the appellants were tried, have been proved by the prosecution. Prosecution miserably failed to prove its case. The appellants deserve to be acquitted.

5] In the alternative, learned counsel for the appellants submitted that no offence of murder was committed by appellants and looking to the evidence and the case of the prosecution, a lower offence can be said to have been proved, and therefore, the alternate submission deserves to be accepted. He, therefore, submitted that appeal should be allowed.

6] Per contra, learned Additional Public Prosecutor for the respondent/State supported the impugned judgment and order and submitted that there is voluminous evidence on record to justify the conviction of the appellants. He also opposed the alternate plea raised by the learned counsel for the appellants. Finally, learned Additional Public Prosecutor prayed for dismissal of the appeal.

CONSIDERATION

7] We have heard learned counsel for the rival parties. With their assistance, we have perused the entire evidence

tendered by the prosecution on record. We have also seen the reasons recorded by the learned trial Judge for basing the conviction of the appellants as above. We have carefully considered the enmity aspect of the matter qua PW 1 Meena and PW 2 Bhagyashree, and keeping in mind the law as to the appreciation of evidence of interested witnesses, we have perused the evidence of the witnesses.

8] PW 1 Meena the wife of appellant no.1, in so far as incident is concerned, deposed in paragraph 2 of her evidence.

We quote her evidence from said paragraph as thus :-

“ On 13.11.2008 it was Thursday. Myself and my daughter were at the house and my mother was at her house at some distance from my house. It is at a distance of after 4 to 5 plot. At about 6.30 a.m. I cleaned the house. There was marriage of Tulshi, therefore, we were preparing for the same. At that time, my son and my husband came there. My husband had katti and son had iron rod in their hands. My husband started assaulting me with katti. I received head injury and injury on both the hands. I shouted and tried to resist the attack. My daughter intervened the assault. My husband dealt katti blow on the right hand of my daughter. I fell down. I sustained bleeding injury. Thereafter accused nos. 1 and 2 thought that I am dead, therefore, left the home by saying, “आता म्हातारीचा काटा काढू या” and went towards the house of my mother. My daughter followed them. My husband assaulted my mother. On seeing this, she returned home. She told that Aajji was assaulted, she may not survive. Then my daughter informed the police station about the incident on phone.”

She also identified the articles namely katti and iron rod before the court and stated that she was in the hospital due to the injuries suffered by her for about one month. We have perused cross-examination of this witness. The entire cross-examination nowhere shows any infirmity in her evidence. About attack on PW 1 Meena causing her grievous injuries, we find that there is no cross-examination at all on that point. We have, therefore, no reason to disbelieve this witness merely because she is said to be an interested witness. Her statement was immediately recorded on 13.11.2008 itself after the examination was made by the doctor which is signed by her. Thereafter her supplementary statement was recorded on 14.6.2009, but then her immediate statement on the date of incident itself clearly leads us to believe her substantive evidence on oath before the trial court. Since it does not suffer from any infirmity, it is believable. It may be that she had filed matrimonial proceedings against her husband or has the grievance due to her husband marrying second time, but then we do not find any infirmity in her evidence to disbelieve her evidence, and therefore, we reject the submission that her evidence should be rejected as interested witness.

9] The next witness is PW 2 Bhagyashree. She is a grown up daughter aged about 17 years and fully understands the consequences of her deposing before the court against her

father and brother who are her blood relations. We quote para 5 from her evidence, which is most material, as under : -

“ On 12.11.2008 in the morning, I heard the shouts of my mother, therefore, I woke up. I saw my father was assaulting my mother with 'katti' and brother Krushna with iron pipe. I intervened the quarrel. My father dealt 'katti' blow on my left hand. They assaulted on the head and back of my mother. As such, my mother sustained bleeding injury. My mother fell down. Then my father said, “आता म्हातारीचा काटा काढू या” and went towards the house of my maternal grand-mother. They had 'katti' and iron rod in their hands. I followed them. My father and brother entered the house of my maternal grand-mother. As my father and brother were assaulting my maternal grand mother, she started shouting. Then I returned back to my house and informed my mother in respect of assault on my maternal grand mother by my father and brother.”

She also identified weapons katti and iron pipe shown to her in the court. We have seen her cross-examination and we find absolutely no infirmity in her evidence and except the suggestion there is no cross-examination worth the name to shatter her testimony. We have, therefore, no reason to disbelieve this witness also, as she is a blood relation of the appellants, namely the daughter of appellant no.1 and sister of appellant no.2.

10] We have then evidence of PW 12 Pralhad. Pralhad stated in paragraph 1 of his evidence. We quote paragraph 1 from his evidence, which reads thus : -

“ On 13.11.2008 I was at my house. I had a phone call from Devidas that I am to wait at Milk Dairy Corner, he is coming. He was intending to talk with his wife as Krushna is my friend and I am having good relations with him. At the same time, I had good relations with Meenabai. As such, at about 6.00 a.m. I was at milk dairy. Then I went for tea by the side of the hotel. At that time, I heard the shouts of Bhagyashree. As such, I rushed to her house. At that time, Bhagyashree was weeping and saying that her father and brother attacked her mother. Blood was oozing from the hand of Bhagyashree. People had gathered there. We saw Krushna and his father were going on the motorcycle. They had iron rod and katti with them. They went towards Nanded side. Thereafter about 15 minutes, police had come there. Police took Meenabai to the hospital. Laxmibai was there. My mobile number was 9325623137. Again I received phone from Devidas. I told him that I learnt there is attack on Meenabai and Bhagyashree was weeping. Thereupon Devidas told me that he was disturbed therefore, he attacked Meenabai. “

Perusal of his evidence clearly shows the events which occurred on that day. We have perused cross-examination of this witness and we do not find anything damaging in his evidence. It appears from his evidence that there was also extra judicial confession made by appellant Devidas to him that as he was disturbed he attacked Meena. He is an independent witness. His evidence is equally important, since he saw appellants running on motor cycle having katti and iron pipe in their hands towards Nanded side and Bhagyashree was bleeding and weeping saying that her father and brother attacked her mother. The statement made

by learned counsel for the appellants that, this witness does not say a word about Bhagyashree saying that Laxmibai was assaulted by the appellants, does not appeal to us. What Bhagyashree had uttered in his presence has been stated by him. We, therefore, do not consider that the evidence of Bhagyashree can be said to have been affected on this count.

11] In so far as evidence of Bhagyashree is concerned, the submission that she is not the eye witness to the murder of Laxmibai also does not appeal to us. The reason is that, her evidence shows that she followed the appellants who had weapons after the assault by the appellants on her mother, towards the house of her grand mother Laxmibai, saw appellants entering into the house of Laxmibai and Laxmibai then shouting for her life is nothing short of she being an eye witness to the incident. In our opinion, that is a very strong evidence against the appellants, which has not been challenged in cross-examination. We, therefore, find the evidence of these witnesses fully believable. There is no discrepancy whatsoever and we have no reason to disbelieve them.

12] PW 9 is Girjabai Garade. She also deposed hearing of shouts at the house of Laxmibai and Meena, but then she was declared hostile.

13] PW 4 is Subhash Thakur, who is acquainted with the appellants. He identified the motor cycle that was ultimately seized.

14] To sum up, the evidence of these witnesses inspires confidence. The injuries caused to PW 1 Meena are of serious nature numbering ten. She was fortunately saved, but her mother Laxmibai expired due to injuries caused to her. The injuries caused to her mother are described in para 30 of the trial court judgment. There are nine injuries to her body, out of which four are chop wounds, obviously caused by katti and incised wound and contusion caused by iron pipe. Not only that, even Bhagyashree was injured, as stated earlier. The trial Judge stated in para 29 of its judgment about the same. We quote para 29 of the judgment of the trial court, which reads as under : -

“ Further he deposed that on very day, he also examined Bhagyashree Devidas and noticed incised wound of 3 x 2 cm. on left, fourth and fifth finger caused by sharp weapon within 12 hours. Accordingly, he issued certificate Exh.56. Further he deposed that the said injury is possible by the 'katti' before the court. Perused Exhs.55 and 56. Both these documents are corroborated with the evidence of PWs. 1 and 2 and PW 6 and show that injuries sustained by the PWs. 1 and 2 are caused by 'katti' and iron pipe. “

15] In so far as scientific evidence is concerned, we find that there is very strong evidence against the appellants. Instead of quoting their evidence, we would like to quote paragraph 34 of the judgment of the trial Judge. Para 34 therefrom reads thus : -

“ Exhs. 88 and 89 pertain to the blood sample of accused nos. 1 and 2. The result of analysis below Exh.88 shows it is inconclusive whereas Exh.89 shows it is blood group “A”. At the same time, blood sample of Meenabai vide Exh.91 shows it is a blood group “A”. Further Exh.90 shows that Articles like Article Nos. 1 to 4 earth, 5-saree, 6-petticoat, 7-blouse, 8-saree, 9-petticoat, 10-blouse, 11-chaddar, 12 and 13-jackets and 14-blood of deceased Laxmibai. Test result of analysis shows that human blood was detected below Article Nos. 1 and 2, 4 to 13 and show that Article Nos. 4 to 12 stained with blood group “A” and even blood group of deceased Laxmibai is also shown to be “A” group. As such, it is seen that the blood was noticed on the jacket of the accused Article 12. No explanation is coming from the accused as to how the blood group “A” which is of complainant and deceased Laxmibai appear on the jacket. Naturally, the same must have fallen on it when accused nos. 1 and 2 had attacked complainant and deceased Laxmibai. “

16] The appellants took a defence that the thieves assaulted PW 1 Meena, PW 2 Bhagyashree and deceased Laxmibai. The said defence was obviously turned down for the reasons recorded by the learned trial Judge in para 42 of the judgment. We quote para 42 of the judgment of the trial Judge, which reads thus : -

“ Further more, it is seen that the evidence of PWs. 1 and 2 corroborates with the evidence of Medical Officers PWs. 6 and 13 in respect of the injuries found on the person of PWs. 1 and 2 and deceased Laxmibai. Now the fact remained whether the death of deceased Laxmibai was caused on the assault of the accused or the thieves? At the same time, whether PWs. 1 and 2 sustained injuries on account of assault by the accused nos. 1 and 2 or by the thieves? Admittedly, at the time of incident PWs. 1 and 2 were residing at Vinkar Vasahat, Dhanegaon. After a distance of about 4 to 5 plots, deceased Laxmibai the mother of the complainant was residing. It is also not in dispute that the alleged incident in question took place at about 6.30 a.m. on 13.11.2008. If for the time being, the defence of the accused is to be taken into consideration that the thieves assaulted the Pws. 1 and 2 and deceased Laxmibai, under such circumstances, the said fact should have been reflected in the statement of the accused u/sec. 313 of Cr.P.Code. However, both are silent in that regard. “

17] The next submission by the learned counsel for the appellants is that a lower offence is proved and not the offence of murder. We do not agree. In the first place, the appellants were absconding in the murder case of Dattatraya and during abscontion having come to know about PW 1 Meena and PW 2 Bhagyashree being witnesses in that case, they entered the house of PW 1 Meena, PW 2 Bhagyashree and her mother Laxmibai and attacked them with deadly weapons like katti and iron pipes. PW 1 Meena was severely assaulted by deadly weapons and suffered several injuries and was luckily saved.

PW 2 Bhagyashree was also injured. Laxmibai was also assaulted with deadly weapons with chop wounds all over the body, who died instantaneously. The appellants have acted brutally against their blood relatives. Looking to the injuries caused by the appellants, the weapons chosen by them for assault and the determination with which they entered the house of Meena, Bhagyashree and Laxmibai at 6.00 a.m., to our mind no other offence except the murder is proved by the prosecution against the appellants.

18] To sum up, the prosecution has clearly proved its case beyond doubt. The reasons recorded by the learned trial Judge are legal, proper and correct. There is no reason to interfere. In the result, we pass following order.

ORDER

Criminal Appeal No. 403 of 2012 is dismissed.

[INDIRA K. JAIN, J.]

[A.B.CHAUDHARI, J.]