

UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT

BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPEAL NO.484 OF 2012.

Prakash S/o Dhudku Desale,
Age 48 years, Occ.Nil,
R/o Sindhi Colony, Near
Rahul Ready made, Bhusawal,
Tq. Bhusawal, Dist.Jalgaon,
(At present is in jail). ... Appellant.

Versus

The State of Maharashtra. ... Respondent.

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Mr.S.B.Jadhav, advocate appointed as Amicus
curiae for the appellant.
Ms.R.P.Gaur, A.P.P for the State.

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**CORAM : S.V.GANGAPURWALA AND
V.K.JADHAV, JJ.**

Date : 19.11.2015.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. The present appellant-accused is
prosecuted for an offence U/s 302 of the I.P.C.

He is convicted for the said offence for imprisonment for life and fine of Rs.1,000/- (Rupees one thousand). Against the said conviction, the present appeal.

2. Mr.S.B.Jadhav, learned counsel is appointed through Legal Aid to work out the matter.

3. Mr.Jadhav, learned counsel for the appellant submits that the whole case is based on the sole testimony of P.W.2 - the alleged eye witness. According to the learned counsel, the testimony of the said P.W.2 is not reliable. The same is not trust-worthy nor corroborated by any other evidence. The evidence of P.W.2 read in its entirety, is not in tune with the evidence of P.W.1. Though P.W.2 in his evidence has stated that the accused had stabbed the deceased with his knife. However, his other evidence is contradictory to the evidence of P.W.1. P.W.2 states that he called P.W.1 i.e. the son of the deceased from his house, whereas P.W.1 states that P.W.1 was called by his friend Vicky. The

learned counsel submits that there is material contradiction in this regard According to the learned counsel, even the recovery panchanama is not proved. The recovery of knife and clothes is not proved. The discovery is not in tune with and as contemplated U/s 27 of the Evidence Act. The learned counsel relies on the judgment of the Apex Court in a case of **"Pulukuri Kottaya and others Vs. Emperor"** reported in **A.I.R. (34)1947 Privy Council 67**, to substantiate his contention that the evidence of a solitary eye witness has to be read with caution and is required to be corroborated. He relies on the judgment of the Apex Court in a case of **"Ramnaresh and others Vs. State of Chhattisgarh"** reported in **(2012) 4 Supreme Court Cases 257** and another judgment of the Apex Court in a case of **"State of Uttar Pradesh Vs. Satveer and others"** reported in **(2015) 9 Supreme Court Cases 44**. The learned counsel further submits that even Exh.35 and 36 i.e. Chemical Analyser's report are not helpful to the prosecution case. The C.A. Report is inconclusive as to the blood group of the blood stains on the clothes and the knife. In absence

of any corroborative evidence, it would be unsafe to rely upon the evidence of P.W.2 and base conviction on the basis of the said evidence.

4. The learned counsel in alternate submits that the incident was on account of the sudden quarrel between the parties and in such a case the proper conviction would be U/s 304 Part II of the I.P.C. There was no premeditation or pre-plan on the part of the accused to cause death. The learned counsel relies on the judgment of the Apex Court in a case of **"Chinnathaman Vs. State, Rep by Inspector of Police"** reported in **AIR 2008 Supreme Court 784** and another judgment of the Apex Court in a case of **"Ramjit and others Vs. State of U.P."** reported in **2009 ALL MR (Cri.) 495 (S.C.)**.

5. Ms.Gaur, learned A.P.P. Submits that the case of the prosecution is based on the evidence of eye witness which is on a higher pedestal. The prosecution case is proved by the evidence of P.W.2. The evidence is reliable. The said witness is an independent witness and

conviction can be based on the testimony of the sole eye witness. The learned A.P.P. Submits that the evidence of the eye witness is corroborated by the other evidence, such as recovery of the blood stained clothes of the accused, the recovery of the blood stained knife used in the offence. Though the C.A. Report regarding the blood group on the said clothes and knife is inconclusive, however, it is conclusive about the fact that the said blood stains are human blood stains. Even the evidence of Doctor corroborates the theory of prosecution. The doctor in his evidence states that the injury by which the deceased succumbed to death can be caused by knife.

6. Learned A.P.P. Submits that the conviction of the accused U/s 302 of the I.P.C is legal and proper. Only because the death of the deceased is by one blow, the same is not sufficient to bring the case within the ambit of Section 304 Part I or II of the I.P.C. The learned A.P.P relies on the judgment of the Apex Court in a case of **"Jaiprakash Vs. State (Delhi**

Administration)" reported in **(1991) 2 Supreme Court Cases 32**, so also another judgment of the Apex Court in a case of **"Pulicherla Nagaraju alias Nagaraja Reddy Vs. State of A.P."** reported **(2006) 11 Supreme Court Cases 444**.

7. We have considered the submissions, so also have gone through the record.

8. The case of the prosecution is sought to be proved basically by the evidence of P.W.2. There can not be any dispute with the proposition that the sole testimony of the eye witness if it inspires confidence is sufficient to convict the accused.

9. Perusal of the evidence of P.W.2, it states the manner in which the quarrel started. The quarrel turning into scuffle and thereafter the accused going inside the house, fetching the knife and stabbing the deceased. The sequence of events have been stated by P.W.2. The said evidence of P.W.2 is not shaken or impeached in cross-examination. The evidence of the eye

witness read in its entirety, the same does not suffer from any major contradictions with that of the evidence of the other witness. Minor contradictions would not be sufficient to discard the said evidence in its entirety. One can not expect a witness to have a photogenic memory and to recall each and every minute details. Even in cross-examination, it is not disputed that the said person P.W.2 owns his shop of Omlet and Chinese food at Jairamwadi i.e. near the place of offence. The said evidence of P.W.1 is consistent. So also the recovery at the behest of the accused of his blood stained clothes and the blood stained knife corroborates the evidence. Even the Doctor has opined that the injury inflicted upon the deceased is possible by knife. The evidence has been discussed by the Sessions Court properly. The said evidence of eye witness is supported by the medical evidence and the panch witness in whose presence knife is recovered at the instance of the accused which had blood stains.

10. P.W.4 has proved the seizure panchanama

of the blood stained clothes of the deceased. He has further spoken about the information given by the accused of concealing knife beneath the cot in his house and recovery of knife from his house vide panchanama Exh.23. The said witnesses are independent witnesses.

11. Though the blood group could not be determined on the knife, however, it is clear that the same was human blood. The independent eye witness has no grudge against the accused nor has got any concern with the deceased. The evidence of the eye witness is reliable and inspires confidence and is supported and corroborated by surrounding circumstances on the material aspects. The death of the deceased at the hand of the accused is proved.

12. The arguments of the learned counsel for appellant that even if the incident is proved, the provisions of Section 304 Part II of the I.P.C. Would be attracted and not Section 302 of the I.P.C. is also required to be considered. It is a death by single blow. The same is below

the chest near the stomach. One thing which needs to be considered is the manner in which the quarrel started. The Apex Court in a case of **"Pulicherla Nagaraju alias Nagaraja Reddy Vs. State of A.P."** referred supra has held that the intention to cause death can be gathered generally from a combination of a few or several of the following, among other circumstances :

"(i) nature of the weapon used;

(ii) whether the weapon was carried by the accused or was picked up from the spot;

(iii) whether the blow is aimed at a vital part of the body;

(iv) the amount of force employed in causing injury;

(v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;

(vi) whether the incident occurs by chance or whether there was any premeditation;

(vii) whether there was any prior enmity or whether the deceased was a stranger;

(viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;

(ix) whether it was in the heat of passion;

(x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and they may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

13. It would appear from the evidence of P.W.2 that it is the deceased who provoked the accused by teasing the accused that the daughter of the accused had eloped with her lover after her marriage and that his daughter has cut his

nose by doing this act. Thereafter the quarrel took place and quarrel turned into the scuffle. The house of Prakash i.e. accused is nearby. The accused went in his house, brought a knife and assaulted deceased with knife in his stomach and the accused collapsed. It is the deceased who initially provoked the accused because of which there was a quarrel. The time gap between the scuffle and the accused bringing the knife from his house is not much, it is of few minutes. The act was in the course of the sudden quarrel. The incident was by chance and not with any premeditation. There was no prior enmity. The initial provocation was on the part of the deceased and certainly, it was in the heat of passion the accused acted. It was a case of single blow. The present case is similar to the one before the Apex Court in a case of **"Ramjit and others Vs. State of U.P."** referred supra. In the said case before the Apex Court, there was exchange of hot words over bullocks of deceased damaging crop of accused. While exchange of hot words and quarrel was continuing, accused persons went inside, came back armed after less than a

couple of minutes and attacked the accused in which the accused died. The Apex Court set aside the conviction U/s 302 and convicted the accused therein U/s 304 Part I of the I.P.C. In the present case the facts are similar as has been discussed above. In view of that we think it appropriate to convert the conviction of the accused from Section 302 of the I.P.C. To Section 304 Part I of the I.P.C.

14. In the result, we pass the following order :

I) The judgment of the Sessions Court convicting the accused/appellant Prakash Dhudku Desale U/s 302 of the I.P.C is quashed and set aside, instead the appellant/accused Prakash Dhudku Desale is convicted for an offence punishable U/s 304 Part I of the I.P.C. And is sentenced to suffer rigorous imprisonment for 7 (seven) years and to pay fine of Rs.1,000/- (Rupees one thousand), in default to further undergo rigorous imprisonment for six (6) months. The sentence already undergone be given set off.

(ii) We appreciate the assistance given by

Mr.Jadhav, learned counsel appointed through Legal Aid. We quantify his fees as Rs.7,000/- (Rupees seven thousand).

(V.K.JADHAV, J.)

(S.V.GANGAPURWALA, J.)

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