

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.390 OF 1998

Chandrakant Bapu Nawale,
Aged about 23 years, residing
at Adivare, Taluka-Rajapur,
District Ratnagiri, Agriculturist.

...Appellant.

versus

1. State of Maharashtra
(through Rajapur Police Station,
Rajapur, District-Ratnagiri.

2. Kalpana Kashinath Nawale
R/o. Kalakawadi, Taluka Rajapur,
District Ratnagiri

..Respondents.

.....

Mr. Rajiv Patil, Senior Advocate a/w Mr. Mohan N. Devkule and
Mr. Rakesh Bhatkar, for the Appellant.
Mr. H.J. Dedhia, Addl. P.P. for the State.

.....
**CORAM : B.P. DHARMADHIKARI &
A.S. GADKARI, JJ.**

27th July, 2015.

JUDGMENT (PER A.S.GADKARI, J.) :

The Appellant, original accused has impugned the judgment and order dated 4th March, 1998 passed by the learned Additional Sessions Judge, Ratnagiri in Sessions Case No.33 of 1995 thereby convicting him for the offence punishable under Section 302 of the Indian Penal Code and sentencing to suffer life imprisonment. The Appellant was further directed to pay compensation of Rs.50,000/- to Smt. Kalpana Kashinath Nawale, widow of the deceased (Kashinath Keshav Nawale)

and her children.

2. The facts which can be enumerated from the record and are necessary to decide the present Appeal can briefly be stated thus :-

i) That the deceased Kashinath Keshav Nawale was the resident of Kalakawadi, Taluka Rajapar, District Ratnagiri. He used to reside with his wife Kalpana, two sons and a daughter. Few days prior to Ganesh immersion of the year 1994, the Appellant had come from Mumbai to Kalakawadi. The Appellant was working in a tailoring shop of Mr. Vasant Nawale, the real brother of deceased Kashinath. That the Appellant was removed from his service / job and the Appellant was of the opinion that it was at the instance of the deceased the Appellant had to lose the job. That on 8th September, 1994 a quarrel took place between the deceased and the Appellant. Both hurled abuses to each other. At that point of time, the Appellant administered threat to the deceased, to kill him.

ii) The alleged incident of murder of Kashinath took place on 13th September, 1994. It was the Lord Ganapati immersion day. In the evening at about 6.00 p.m. the villagers of village Kalakawadi which is a hamlet of Adivare, had gathered near the river for Ganpati immersion. After the immersion ceremony, the respective families

were returning back to their house. After the immersion of Ganapati idol of Kashinath (deceased) his son Bhushan and daughter Roshani returned back to their house whereas Kashinath and his other son Amit stayed back to have the Prasad. That Kashinath along with his son Amit were returning to their house and when they came to the stall / shop of one Prafulla Narvekar, at that point of time the Appellant assaulted Kashinath with a wooden log. Due to the blow given by the Appellant on the head of Kashinath, he fell down on the ground. Kashinath was bleeding profusely and blood was oozing from his nose and mouth. Amit, son of Kashinath rushed to his house and narrated the incident to his mother Smt. Kalpana. Smt. Kalpana along with her children i.e. sons - Amit and Bhushan rushed to the spot of incident where Kashinath was lying. They brought him back to their house. On being asked by Kalpana, Kashinath informed her that Chandrakant Nawale (Appellant) assaulted him. Smt. Kalpana gave water to Kashinath. However, he was not in a position to swallow it. By that time Kalpana realised that Kashinath had succumbed to death.

iii) After some time, Police Patil of the village came on the spot. He asked the villagers to take the Appellant to a Kalika temple and the said Police Patil left the house to contact the police station on telephone. Subsequently, the police came. P.W.8 - Raghav Bagave, Police Sub-Inspector then attached to Rajapur Police Station came to

the spot of incident. He recorded the First Information Report of Smt. Kalpana (P.W.1). The said report is at Exhibit 14. P.W.8 - Raghav Bagve - PSI started investigation. P.W.8 - Raghav Bagave drew spot of incident Panchanama, inequest Panchanama and sent the dead body of Kashinath for postmortem. Dr. Vasant Mane (P.W.5) conducted postmortem on the dead body of Kashinath. PSI Bagave recorded the statement of various witnesses and after receipt of the Chemical Analyser's report, he submitted the charge-sheet against the Appellant in the Court of Judicial Magistrate First Class, Rajapur under Section 302 of the Indian Penal Code.

3. The Judicial Magistrate First Class, Rajapur committed the said case to the Court of Sessions as per the provisions of Section 209 of the Criminal Procedure Code. The learned Trial Court framed the charge below Exhibit 7. The said charge was read over and explained to the Appellant in Marathi vernacular to which he denied and claimed to be tried. The prosecution in support of its case examined in all eight witnesses. The learned Trial Court after recording the evidence and after hearing the parties to the said case has convicted and sentenced the Appellant as stated herein above.

4. Heard Mr. Rajiv Patil, learned senior counsel for the Appellant and Mr. H.J. Dedhia, learned APP for the State and also perused the

record pertaining to the present case. Mr. Patil, learned senior counsel appearing for the Appellant submitted that the incident in question had occurred in the midst of a village wherein the houses of other villagers are situated in the said vicinity. As it was Ganapati immersion day, there were lot of persons present near the spot. However, the prosecution did not examine any other independent witness to prove the case. He further contended that the so called extra-judicial confession given to Gopinath Monde (P.W.4) cannot be relied upon as in his submission the said witness is a got up witness and/or a chance witness. He further contended that the evidence of P.W.2 – Amit i.e. the son of deceased Kashinath who is a child witness is not trustworthy and therefore, cannot be relied upon for concluding that the Appellant has committed the crime and on the sole testimony of the said witness, conviction cannot be based. He further submitted that the version of assault given by Amit (P.W.2) is not supported by medical evidence so also the distance as narrated by the said P.W.2 is not in consonance with the Panchanama of the scene of offence. He further contended that the alleged dying declaration given by deceased Kashinath to Kalpana (P.W.1) and Gopinath Monde (P.W.4) has been discarded by the Trial Court as there is no corroboration to the said evidence and the witnesses do not support each other about their presence. He, therefore, urged before us that the present Appeal may be allowed and the Appellant may be acquitted from all the charges

levelled against him.

5. Mr. Dedhia, learned APP supported the impugned judgment and order and submitted that the evidence on record inspires confidence. He submitted that P.W.2 - Amit, son of deceased Kashinath was present on the spot at the time of commission of the offence and his evidence is trustworthy and reliable. He further submitted that the evidence on record is sufficient to uphold the conviction and sentence of the Appellant. He lastly submitted that the conviction and sentence of the Appellant may be sustained and the present Appeal may be dismissed.

6. In order to effectively deal with the submissions advanced by Mr. Patil, learned senior counsel for the Appellant and Mr. Dedhia, learned APP for the State, it would be useful to advert to in brief the evidence of prosecution witnesses.

7. P.W.1 - Smt. Kalpana Kashinath Nawale is the wife of deceased Kashinath. This witness apart from proving the motive behind the crime has also been examined to prove the oral dying declaration of deceased Kashinath. This witness in her testimony has stated that the incident in question took place on Ganpati immersion day. That her husband and her sons had gone to the river for Ganpati immersion. At

about 6.00 p.m. her son Bhushan and daughter Roshani returned back from the river. She asked them as to where their father was. They told her that their father will be following them after taking the "Prasad". At that time from her house she saw that the Appellant - Chandrakant went towards the river with a wooden log in his hand. Thereafter her son Amit came and told her that the Appellant - Chandrakant hit her husband with a wooden long. She herself and her son Bhushan went to the place of incident where her husband was lying. She saw that her husband was bleeding profusely. She along with her sons brought her husband back to their house. She asked her husband as to what had appended to which her husband replied that the Appellant assaulted him and took a draught of his blood and immediately he became unconscious. She thereafter offered water, but he could not drink it.

In the cross-examination, she has admitted that the houses of Shankar Bawkar, Vijay Nawale, Pandurang Salvi, Shashikant Narvekar and Janaki Nawale are situated in the vicinity of a place where her husband was lying by the side of the road. She has also admitted that she did not lodge any report of threats administered by the Appellant to the deceased prior to the incident. She has further admitted that before the police recorded her statement, she discussed in the meanwhile as to what complaint should be lodged with the police. She has also admitted that Police Patil took a lead in lodging

the report. She has admitted that much time elapsed in between the fact she saw Chandrakant going with a wooden log and her Son Amit informing that Chandrakant assaulted her husband.

8. P.W.2 – Amit Kashinath Nawale is the son of P.W.1 and deceased Kashinath. On the date of deposition i.e. on 20th January, 1998 Amit was 14 years old and on the date of incident in the year 1994 Amit was about 10 years of age. P.W.2 – Amit in his testimony has stated that the relations between his father and uncle were strained and they were not on visiting terms. That on 8th September, 1994 the Appellant threatened his father to kill him. The said threat was given in his house. Before that the Appellant used to work with his uncle Vasant in his tailoring shop. As the Appellant was removed by his uncle at the instance of his father, the Appellant threatened his father. P.W.2 in his testimony has further stated that the incident in question took place on 13th September, 1994. It was Ganpati immersion day. After the immersion the Appellant took “Prasad” and immediately returned back to his house. After taking the “Prasad”, P.W.2 and his father were returning back to their house. They came up to the hotel / stall of Prafulla Narvekar. The Appellant – Chandrakant came there and gave a blow on the left side of the head of his father with a wooden log. His father fell down on the ground and blood started oozing from his mouth and nose. The Appellant then kicked his father, who was lying

on the ground and also gave fist blows. He then came to the house to tell his mother about the incident. Thereafter he himself, his mother and his elder brother came to the spot of incident. They took his father to the house. His mother offered water to his father and on being asked to his father about the incident, his father replied that "Chandrakant killed me". Then his mother went to the house of Anil Padhye to contact the doctor on telephone. However, as the phone was dead, she returned back and offered local medicine to his father. At about 7.30 p.m. his father expired.

This witness was cross examined by the Appellant at length, wherein the omission with respect to the threat administered by the Appellant to his father about killing has been brought on record. In the cross-examination this witness has admitted that the house of Shankar Bawkar was near in the place where the incident took place. That the houses of Vijay Nawale, Janaki Nawale, Pandurang Salvi and Shashikant Narvekar were situated in his Wadi. The distance between his house and the place where his father was lying was not within a distance of his call. That his relationship with the aforesaid four persons was cordial. He has further admitted that the beating of his father was going on for about 5 to 10 minutes. That his father was beaten on all the parts of the body. That he raised shouts and started crying at the spot of incident. However, nobody came to help him in response to his call. That after the incident was over, he went to call

his mother. That when they came to the spot, at that time also nobody came to their help. This witness has further admitted that after bringing his father to the house, with the help of one Bandu Rokade he changed the clothes of his father. At that time his father was alive. He did not notice any injuries on the person of his father over the body. That he saw only one head injury on the person of his father. That he did not see swelling on the body.

9. P.W.3 is Narayan Rokade, an alleged eye witness to the incident. P.W.3 in his testimony has stated that he was working as a Gaon Kotwal. That the incident took place on 13th September, 1994. That on the date of incident, when he came on the road, he saw that near the tenement of Prafulla Narvekar, the Appellant was assaulting Kashinath Nawale by a wooden log on the left side of his head. That Kashinath fell down on the ground. Thereafter the Appellant beat Kashinath by kicks and first blows. He then warned the Appellant not to bit Kashinath and asked him to go home. At that time, the Appellant told him not to interfere in the matter.

In the cross-examination, this witness has admitted that he did not hear shouts of anybody after he witnessed a fact that the Appellant assaulted the deceased. That he was not standing by the side of a road of Kalika temple. An omission to the effect that he did not state the fact to the police in the statement that the shop of

Prafulla Narvekar was closed at the relevant time has been brought on record. A further omission has been elicited at the instance of this witness to the effect that the accused threatened him not to interfere in the matter. This witness has further admitted that as the beating was going on, he could not take Kashinath to his house. He has further admitted that though he felt seriousness of the incident, he did not go to the house of Kashinath Nawale. That in the relevant night, he was in his house. That he came to know about the death of Kashinath on the next day. Till the next day morning he did not divulge the said fact of incident to anybody.

10. P.W.4 is Gopinath Monde. This witness is examined for establishing the extra-judicial confession given by the Appellant to this witness. This witness in his testimony has stated that at about 7.45 p.m. on 13th September, 1994, he heard the cries from the house of Kashinath. Some time thereafter Police Patil came to the house of Kashinath (deceased) and inquired about the incident. The Police Patil told him and others to take the Appellant to Kalika mata temple and in the meanwhile, Police Patil would go to the house of Shri. Padhye to telephone the police. P.W.4 thereafter along with other villagers took the Appellant to kalika temple and asked him as to what happened to which the Appellant replied that, "how long he should suffer, he suffered for 12 years, he has cleared a thorn from his path." "He killed

Kashinath by a *jangali* bamboo.” That he along with others was in the temple upto 2.30 a.m. when the police came in the village. They handed over the custody of the Appellant to the police and returned to their respective houses.

In the cross-examination this witness has admitted that without any resistance the Appellant came along with the villagers to Kalika temple. He has further admitted that he has no conversation with Chandrakant (Appellant) on their way to Kalika temple. That he gave a statement to the police when they came to record his statement. He has further admitted that he did not divulge the said fact of the utterances of the Appellant to the police in the previous night itself when the police were drawing the inquest Panchanama.

11. P.W.5 - Dr. Vasant Mane is the Medical Officer who had conducted the postmortem of the dead body of Kashinath Nawale. P.W.5 in his testimony has stated that on 14th September, 1994 at about 11.00 a.m. Police Constable Surve brought the dead body of Kashinath Nawale for conducting postmortem. That he started postmortem at 2.00 p.m. and completed it by 3.00 p.m. That according to him the cause of death was due to fracture of skull and shock due to big heumeatoma and injury to vital parts of brain and rupture of middle meningeal artery. He mentioned the surface injuries found on the person of the deceased in Column No.17 of the

postmortem notes. The said injuries are as follows:

- “1) Contingent above and behind left ear 1 inch x 1 inch.
- 2) Abrasion middle aspect of right and left lap.”

He mentioned the internal injuries in Column No.19. That he found three internal fractures and gave its description in Column No.19. The cumulative effect of the three internal injuries resulted into death. This witness has further stated that the injuries mentioned in Column No.19 are sufficient to cause death. The postmortem report is at Exhibit 20. That all the three internal injuries as mentioned in Column No.19 were possible by a single blow of a wooden log.

In the cross-examination this witness has admitted that if a person under the influence of alcohol suddenly falls down on a rock, such injuries are possible. This witness has further admitted that in view of the injuries sustained to the deceased, a possibility cannot be ruled out that he must have become unconscious immediately after he received the blow. He has further stated in the cross-examination that if a person was assaulted for ten minutes by kicks and blows, there would be many surface injuries on the body of such person.

12. P.W.6 Yeshwant Rokade is a panch witness to the scene of offence. The Panchanama of the scene of offence is at Exhibit 22. This witness in his cross-examination has admitted that when he

signed the document of Panchanama, it was already reduced into writing. He has further admitted that he had come to Court to depose at the instance of Vasant Nawale (brother of the deceased).

13. P.W.7 is Shashikant Ambare, a panch witness to the discovery of wooden log, under Section 27 of the Evidence Act at the instance of the Appellant. As this witness did not support the prosecution case, he was declared hostile and the learned APP with the permission of the Court cross-examined him at length. However, no material which is useful to the prosecution has been brought on record at the instance of this witness.

14. P.W.8 is Raghav Bagave, Police Sub-inspector then attached to Rajapur Police Station and who was the Investigating Officer of the present crime. P.W.8 – Raghav Bagave in his testimony has stated that after receipt of the information about the incident, he proceeded to Kalakawadi to ascertain the said fact. After reaching to the house of the deceased, he saw that the dead body of the deceased was kept in *padavi* (courtyard). He interrogated Kalpana (P.W.1), the wife of deceased Kashinath. He reduced her report in writing. He thereafter arrested the Appellant at about 4.15 a.m. on 14th September, 1994. He then recorded the inquest panchanama, panchanama of the scene of offence i.e. the spot panchanama. That he also effected the

discovery of one wooden log at the instance of the Appellant as contemplated under Section 27 of the Evidence Act from the house of the Appellant. He has further stated that he recorded the statement of witnesses and after receipt of the report from the Chemical Analyser, Pune, he submitted charge-sheet in the Court of Judicial Magistrate First Class, Rajapur. This witness was cross examined at length by the Appellant. However, it appears to us that no material which is useful to the Appellant has been elicited from this witness. It further appears that his cross-examination proceeds by putting him stock questions.

15. After taking into consideration the entire evidence available on record, we find that Dr. Vasant Mane, (P.W.5) the Medical Officer in his cross-examination has admitted that in view of the injuries sustained to the deceased, a possibility cannot be ruled out that he must have become unconscious immediately after he received the said blow. He has further admitted that if a person is assaulted for about ten minutes by kicks and blows, there would be many surface injuries on the body of such person. In view of the said admission it is to be noted here that the alleged oral dying declaration made by the deceased to Kalpana (P.W.1) and his son Amit (P.W.2) appears to be improbable. Amit (P.W.2) in his cross-examination has admitted that there were houses of other people located in the near by vicinity at the spot of incident. He has further admitted that the Appellant beat deceased

Kashinath by kicks and fist blows for about 5 to 10 minutes. This admission of Amit (P.W.2) in the cross-examination is contradictory to the opinion given by the doctor who is the expert in the field, as P.W.5, the Medical Officer did not find any other surface injuries on the person of deceased Kashinath. P.W.2 – Amit in cross, in paragraph 5 supports absence of any other injury except head injury. He has further admitted that though he raised shouts and was crying at the spot of incident, nobody came forward in response to his call. In this background, the presence of Narayan Rokade (P.W.3) near the spot appears to be not only doubtful but improbable. Narayan Rokade (P.W.3) in his cross-examination has admitted that though he saw the incident of beating going on, he could not take Kashinath to his house. He has further admitted that he did not hear shouts of any person after he witnessed the said incident. He has further admitted that though he felt seriousness of the incident, he did not go to the house of Kashinath Nawale. He has further admitted that he was at his house in the night and came to know about the death of Kashinath on the next day. It is to be noted here that P.W.2 – Amit though in his examination-in-chief has made a reference about the presence of this witness near the spot, this witness i.e. P.W.3 – Narayan Rokade in its totality contradicts it by not mentioning the presence of Amit (P.W.2) and hearing cries of Amit at the spot of incident when the beating was going on. It is to be noted here that the Trial Court has not accepted

the version of this witness and has discarded the same as no other witness has stated about his presence near the spot of incident. Otherwise also, we find that the conduct of this witness is not natural, as though he saw the incident, he did not inform it to the police immediately and he went to his own house after witnessing the incident. The said behaviour and/or conduct of this witness, according to us, is un-natural and does not inspire confidence in the mind of this Court. P.W. 4 - Gopinath Monde though has stated about the extra-judicial confession given by the Appellant to him, no other witness has mentioned his presence at the time when the Appellant gave the alleged extra-judicial confession on the way to Kalika Temple. This witness has given the names of many other persons who were present there, but the prosecution has not examined any of them to corroborate the version of this witness. According to us, the Trial Court has rightly rejected the testimony of this witness and did not take into consideration for corroborating the oral dying declaration of the deceased, this particular extra-judicial confession of the Appellant, as his presence at the said spot has not been mentioned by any other witness in the present case. The other important aspect of the present case is that though P.W.7 - Shashikant Ambare was a panch witness to the discovery of the wooden log, which was the weapon in the present crime, he turned hostile and it is surprising to note that neither the Investigating Officer proved the said discovery and/or identified the

said article nor any other witness has in its testimony stated about the same. It also further appears to us from the record that the Chemical Analyser's report pertaining to the wooden log is also not produced and proved by the witnesses. In our considered view, the cumulative effect of the discussion herein above is that the Appellant is entitled for benefit of doubt in the present case.

16. In the light of discussion recorded, we are inclined to give benefit of doubt to the Appellant. Accordingly, he is acquitted of offence punishable under Section 302 of the Indian Penal Code. The judgment and order dated 4th March 1998 in Sessions Case No.33 of 1995 delivered by the Additional Sessions Judge, Ratnagiri is hereby quashed and set aside.

His bail bonds are cancelled. Muddemal property be destroyed after appeal period is over.

(A.S. Gadkari, J.)

(B.P. Dharmadhikari, J.)