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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.60 OF 2007

1. Anandrao Bapuso Patil	]	
age: 50 years,	]	
	]	
2. Vilas @ Balaso Bapuso Patil,	]	
age: 39 years,	]	... Appellants.
	]	Ori. accused
Both resident of Kavalapur	]	
Tal. Miraj, District: Sangli.	]	
	]	
Appellant No.2 at present in Sangli	]	
Prison	]	

V/s.

The State of Maharashtra	]	
at the instance of	]	 Respondent
Sangli Rural Police Station, Dist. Sangli	]	

Mr. S.. V. Kotwal I/by Mr. V.V. Purwant a/w Mr. Sachin Deokar,
for the appellants.

Mr. A.S. Shitole, APP for the Respondent-State.

Mr. Kedar Patil, for the Legal heirs of the deceased.

CORAM : SMT. V.K. THILRAMANI ACTING CJ &
DR. SHALINI PHANSALKAR-JOSHI, J.

CLOSED FOR ORDER ON : 17th NOVEMBER, 2015.

PRONOUNCED ON : 27th NOVEMBER, 2015

JUDGMENT. : [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. This appeal is preferred by original accused Nos. 1 and 2 challenging the judgment and order dated 30th December, 2006, in Sessions Case No.23 of 2005, of Sessions Judge, Sangli, thereby convicting both the appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to suffer imprisonment for life and to pay compensation of Rs.1 lac each to the widow and the children of the deceased; in default to suffer rigorous imprisonment for two years.

2. Brief facts of the appeal can be stated as follows :-

The appellants are the real brothers interse. The appellant No.1 Anandrao at the relevant time was serving in Air India and residing at Mumbai alongwith his family since last more than 20 years. Appellant No.2 Balasaheb was agriculturist looking after agricultural land belonging to the family situate at Kavalapur, Taluka Miraj, District: Sangli. The agricultural land of deceased

Bhanudas was adjacent to the land of appellants. The house of deceased was also adjacent to the house of appellant No.2 Balasaheb. There were some boundary disputes between the appellants and the deceased. Just a month prior to the incident, appellant No.2 Balasaheb, while ploughing his land had uprooted the boundary stones. On that count some altercation has taken place between the deceased and the appellant No.2. The deceased has refixed those boundary stones with the assistance of his cousin brother P.W.10 Mahadeo. However, those stones were again uprooted by the appellants and as a result, the relations between the parties had become quite strained.

3. In this backdrop, the incident giving rise to this case, took place on 25.7.2004. On that day in the morning, appellant No.1 Anandrao had come from Mumbai, as per his usual practice, for one or two days. On that day at about 8.30 a.m. when the deceased was returning from the field, some altercations and exchange of abuses again took place between the deceased and the appellants. Hearing

the altercation and noise of shouting and abuses, P.W.5 Lata Patil, the sister-in-law of the deceased, rushed outside, alongwith Suvarna, the wife of the deceased and they saw that the appellant No.2 Balasaheb was assaulting the deceased with sickle in his hand. The deceased was trying to avoid assault and has raised his left hand to do so. However, he sustained injury on his left hand and he was pushed on the ground by appellant No.1 Anandrao. Appellant No.2 Balasaheb inflicted the blows of the sickle on the waist and back of the deceased. Then appellant No.1 Anandrao took sickle from the hands of appellant No.2 Balasaheb and assaulted the deceased with the said sickle on his both the thighs. P.W.10 Mahadeo, whose house was just adjacent to the house of deceased, rushed there to help the deceased. However, the appellants threatened him not to intervene in the assault. Due to assault, Bhanudas sustained injuries all over his body. Both the appellants ran away from the spot; with appellant No.1 carrying sickle with him. The persons residing nearby and passing on the road then took injured Bhanudas in a tempo to the Civil Hospital at Sangli.

There Doctor declared Bhanudas dead on admission.

4. P.W. 10 Mahadeo then went to Sangli Rural Police Station and lodged complaint against the appellants. On his complaint Exh.89, P.W.13 PI Shinde, registered C.R.No.81 of 2004 and took over investigation. He called two panchas and went to the Civil Hospital. There after making inquest panchanama (Exh.45), he sent the body for postmortem examination. Thereafter PI Shinde went to the spot and drew scene of offence panchanama at Ex.49. From the spot, he collected blood stained soil and simple soil. The photographs of the scene of offence were also taken. On the very day, P.W.13 PI Shinde recorded statements of six witnesses including that of P.W.5 eye witness Lata Patil. Both the appellants were arrested. Their blood stained clothes were seized under panchnama. All the seized articles were referred to Chemical Analyzer.

5. During the custodial interrogation, on 26.7.2004

appellant No.2 Balasaheb gave disclosure statement which was reduced to memorandum panchanama (Exh.94). In pursuance thereto he guided the police and panchas to cattle shade of his house and produced the sickle which also came to be seized under panchanama (Exh.95). Dry blood stains were found on the sickle. Hence it was also sent to Chemical Analyzer.

6. Further investigation was made for some days by PSI Kulkarni, who has on 27.7.2004, recorded statement of another eye witness P.W.7 Tanaji Patil. Meanwhile postmortem notes Exh. 82 were received disclosing the cause of the death as haemorrhagic shock due to ruptured right lung with haemothorax with poly trauma. After completion of due investigation and on the receipt of Chemical Analyzer's report, chargesheet came to be filed against the appellants in the court of Judicial Magistrate First Class, Miraj.

7. On committal of the case to the Sessions Court, the trial Court framed charge against appellants vide Exh.24. The appellants

pleaded not guilty and claimed trial, raising defence of false implication, on account of strained relations.

8. In support of its case, the prosecution examined in all 13 witnesses; whereas the appellants also led the evidence of one witness, by name, Prakash Patil, to prove that the incident has taken place at 7.00 a.m. and not at 8.30 a.m., as alleged by the prosecution.

9. On appreciation of the evidence led by the prosecution and the defence, trial Court was pleased to hold guilt of both the appellants to be proved beyond reasonable doubt for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and convicted and sentenced them as aforesaid.

10. This judgment of the trial Court is challenged in the present appeal by learned counsel for the appellants Shri. S. V. Kotwal, whereas supported by learned APP Shri. A.S. Shitole. In

our considered opinion, before advertng to their rival submissions it would be useful to refer to the evidence on record.

11. To prove homicidal death of deceased Bhanudas, the prosecution has examined P.W.7 Dr. Gulab Sing Rajput, who was attached to Civil Hospital, Sangli and has conducted postmortem examination on the dead body. He noticed following injures, which he has noted down in column No.17:-

Injury No.1 : Over back, scapular region – Incised penetrating wound, extending from inner border of right scapula to left axillary fold. Horizontally oblique 22 cms x 8 cms x right thoracic cavity deep medial site and laterally muscle deep with tapering and near left axillary fold. Rupture portion of right lung seen. No fracture of bones on ribs. Bleeding present.

Injury No.2 Over right scapular region (upper half)- Incised wound, extending from inner border of right scapula to right upperarm (near shoulder). Horizontal oblique with tapering ends. 13 cms x 2

cms x muscle deep with bleeding.

Injury No.3 Right mid lumbar region- Incised wound 5 cms x 3 cms x muscle deep with bleeding.

Injury No.4 Right inguinal and hip joint region- Incised wound extending from lower public region to lateral side of right thigh. Horizontal oblique 25 cms x 7 cms x bone deep. Muscle fibres, tendons, ligaments, femoral vessel and other vessels cut through and through. Cut wound and fracture neck femur and head of femur separated bleeding.

Injury No.5 Left mid thigh – Anteriorly. Incised wound, Horizontally oblique, 11 cms x 5 cms x muscle deep. Muscle fibres cut through bleeding.

Injury No.6 Left forearm – lower 1/3 incised wound. Vertically oblique, 3 cms x 2 cms x muscle deep. Bleeding.

Injury No.7 Left thumb – proximal phalanx (palmer side)- Incised wound. Oblique, 2 cms x 1 cms x muscle deep. Bleeding.

Injury No.8 Left little finger, proximal phalex (palmer side)- incised wound 2 cms x 1 cms x muscle deep. Bleeding.

According to him, all these injuries were antemortem in nature and the injury Nos 1 and 4 were sufficient independently to

cause death in ordinary circumstances. He has further opined that all 8 injuries can be possible due to assault of weapon like sickle. Article "N" the sickle which was recovered at the instance of appellant No.2 Balasaheb, was shown to him and he has stated that the injuries found on the dead body are possible by the said sickle. He has also found corresponding internal injuries which are noted in column No.20 of postmortem notes Exh.82. In his opinion, the cause of death was haemorrhagic shock due to ruptured right lung with haemothorax with Poly trauma. Though this witness is cross examined at length, nothing worthwhile is elicited in his cross examination to disbelieve the fact that the death of deceased was homicidal in nature and caused as a result of injuries which were found to be fatal in the ordinary course of nature.

12. The prosecution case against appellants rests on the evidence of three eye witnesses. First amongst them is P.W.5 Lata Patil- the sister-in-law of the deceased. She was residing alongwith her husband, her brother-in-law deceased Bhanudas, Suvarna, wife

of the deceased and their children. Her evidence proves strained relations between the deceased and the appellants on account of boundary dispute. She has deposed that just 8 days prior to the incident some altercation has taken place between the deceased and the appellant No.2 Balasaheb, as appellant No.2 Balasaheb has removed the boundary stones fixed by the deceased. Hence those boundary stones were again refixed by the deceased and P.W.10 Mahadeo- the cousin of the deceased. On that count also the quarrel had taken place between the deceased and the appellant No.2 Balasaheb. There is corresponding evidence to that effect of P.W.10 Mahadeo, the cousin of the deceased.

13. As to the evidence relating to actual incident, P.W.5 Lata has deposed that while she was cooking in the house in the morning time with her sister-in-law Suvarna, at about 8.30 a.m., she heard noise of shouting and abuses, hence she herself and Suvarna rushed out of the house. They saw that the appellants and the deceased were abusing each other and in that altercation appellant

No.2 Balasaheb assaulted the deceased with sickle in his hand. The deceased raised his left hand to avoid the said attack. However, deceased sustained injury on his left hand. P.W.1 Anandrao pushed the deceased from backside, hence deceased fell on the corner of the road after tumbling. Appellant No.2 Balasaheb again assaulted the deceased with sickle on his waist and back. Appellant No.1 Anandrao then took the sickle from the hands of appellant No.2 Balasaheb and assaulted the deceased on his both the thighs with said sickle. P.W.10 Mahadeo came forward to rescue the deceased from the clutches of the appellants. However, both the appellants threatened him not to do so. Hence Suvarna, the wife of the deceased, fell on the body of the deceased to prevent further assault. The appellants, therefore, ran away from the spot; appellant No.2 Balasaheb carrying sickle with him. Due to assault, deceased had sustained several bleeding injuries on his body and he was thereafter taken to the hospital where he was declared dead.

14. Except for some minor discrepancies, absolutely

nothing worthwhile is elicited in her cross examination to disbelieve her evidence. Her presence at the spot is also natural one as the incident has taken place in front of her house and after hearing commotion she has rushed there. Her statement is also recorded by the police immediately on the same day.

15. Her evidence stands fully supported and corroborated from the evidence of P.W.10 Mahadeo. His house is situated towards western side of the house of deceased with common wall in between. According to his evidence, at the time of incident, he was standing in the courtyard in front of his grocery shop. He heard shouting of the appellants giving abuses to the deceased. Hence he rushed to the house of deceased and saw that the deceased has parked his bicycle and was heading towards the house. At that time, the appellant No.2 Balasaheb gave him abuses in Marathi in filthy language and then started assaulting the deceased with sickle in his hand. The deceased tried to prevent the blow by raising his left hand, but sustained injury to the same. Meanwhile appellant No.1

Anandrao pushed the deceased on the ground, therefore, deceased fell down. Then appellant No.2 Balasaheb again assaulted the deceased with sickle, he gave four blows of the sickle on the waist and back of the deceased. Then appellant No. 1 Anandrao took sickle from the hands of appellant No.2 Balasaheb and assaulted the deceased with the said sickle on his right and left thigh. By that time, the wife of the deceased threw herself over the body of the deceased to save him. He also rushed to save deceased, but the appellant No.1 Anandrao threatened him with dire consequences. P. W. 5 Lata and some witnesses were also present there. Thereafter the appellants ran away from the spot the appellant No.1 carrying sickle with him. When the deceased was taken to the hospital, he was declared dead on admission. Thereafter he himself went to the police station and lodged complaint Exh.89. He showed the spot of incident to the police. Scene of offence was recorded in his presence.

16. Absolutely no omission, contradiction or improvement

and thus no discrepancy is elicited in his cross -examination. His evidence has remained completely and totally unshattered on record. Needless to say that, his presence on the spot, as he is residing in just adjacent house, was natural one.

17. Lastly there is evidence of P.W.6 Tanaji Patil whose house is also situated adjacent to the house of P.W.10 Mahadeo. At the time of incident he was standing in front of house of one Shri. Jagtap in Ganpati lane. On hearing shouts and abuses, he came to the spot and saw that the deceased was assaulted with sickle by the appellants. He has deposed that appellant No .2 Balasaheb was assaulting the deceased with sickle. To avoid attack the deceased raised his left hand. However, appellant No.1 Anandrao pushed deceased from back side. Deceased fell down facing towards the ground, then the appellant No.2 Balasaheb assaulted the deceased with sickle on his back and waist. Thereafter the appellant No.1 Anandrao took sickle from the hands of Balasaheb. Meanwhile the deceased struggled to get up but fell down again facing towards sky

and then the appellant No.1 Anandrao assaulted the deceased on his both the thighs with sickle. P.W.10 Mahadeo tried to intervene, but it was of no use. Therefore, Suvarna fell on the body of the deceased to save him from the attack. The appellants, however, thereafter left the spot carrying sickle with them.

18. His evidence is challenged only on the ground that his statement is recorded on the third day of the incident though he was very much present in the village. In our considered opinion, the delay in recording of his statement is not such that it could prove fatal to the prosecution case and secondly even if his evidence is excluded from the consideration on that ground, there is evidence of other two eye witnesses, referred and discussed above, whose evidence has remained unshattered on record.

19. This ocular account of the incident is completely in tune with the medical evidence, discussed above which proves injuries on the waist and back of the deceased and also injuries on his right

and left thigh caused by sharp edge weapon. Injury Nos 6, 7 and 8 to the left forearm, left thumb and left little finger corroborates the evidence of eye witnesses that the deceased had tried to save himself from the assault by raising his left hand.

20. This ocular and medical evidence is supported in the case from the evidence relating to recovery of the weapon of assault, the sickle, at the instance of appellant No.2 Balasaheb. P.W 13 PI Shinde has deposed that on the very night appellant No.,2 Balasaheb was arrested and during custodial interrogation, on the next day, he gave disclosure statement, showing his readiness to produce the sickle, concealed by him in the cattle shade of his house. This statement was reduced to memorandum panchnama (Exh.94) in presence of Panchas. Thereafter he led police and panchas to the cattle shed and produced the blood stained sickle Article "N" which came to be seized under panchnama (Exh.95).

21. The evidence on record proves that the blood stained

clothes of the appellants which were seized at the time of his arrest and the sickle, were sent to Chemical Analyzer. As per C.A. report (Exh.96), they were found to be of the blood group “B” which is blood group of the deceased.

22. Coming to the evidence of witness Prakash Patil examined by the appellants, to prove that the incident has taken place at 7.00 a.m. and not at 8.30 a.m. as alleged by prosecution. In this respect reliance is also placed on the evidence of Investigating Officer P.W.13 PI Shinde, who has admitted that there is some overwriting as regards the timing of receipt of First Information in the station diary entry Exh.97. In our considered opinion neither evidence of defence witness nor overwriting in the station diary entry relating to timing of incident and relating to giving first information of the incident makes any dent in the prosecution case. The real test is ocular account of incident as given by the eye witnesses. If their evidence is found to be consistent, reliable and trustworthy then merely because of some overwriting in the station

diary, the prosecution case cannot be disbelieved. Especially in the instant case when there is prompt lodging of the F.I.R., giving all the details of the incident and the particular role played by each of appellant. The law is well settled that much importance cannot be given to the lacunas in investigation or lapses committed by the Investigating Officer deliberately or otherwise. If such lacunas or defects in investigation are given much importance, it would be as good as amounting to playing in the hands of Investigating Officer. The deciding factor for the Courts whether to believe or not to believe the prosecution case is the oral evidence of the eye witnesses. If on critical appreciation of their evidence, it inspires confidence in the judicial mind as in the instant case, alleged defects or lapses in the investigation are required to be ignored. As observed by the Apex Court in **Ram Bihari Yadav -vs- State of Bihar and ors, AIR 1998 (Supreme Court) 1850**, “If primacy is given to designed or negligent investigation or to the omissions or lapses created as a result of faulty investigation, the faith and confidence of the people would be shaken not only in the law

enforcing agency, but in the administration of justice.

23. In the present case therefore, we are of considered opinion that there is more than sufficient evidence on record to prove the involvement of the appellants in the homicidal death of the deceased. So far as appellant No.2 Balasaheb is concerned, evidence on record proves that he has given four blows of the sickle, which had resulted into causing injuries on the back and waist of deceased. Out of them as per opinion of P.W.7 Dr. Rajput, injury on the scapular region was sufficient in the ordinary course of nature to cause death.

24. Even as regards the appellant No.1 Anandrao, the evidence on record proves that he has assaulted the deceased with sickle on his left and right thigh. The evidence of P.W.7 Dr. Gulabsing Rajput proves that injury No.4 caused on the right inguinal and hip joint region was also sufficient in the ordinary course of nature to cause the death.

25. Thus, both the appellants individually and also in furtherance of their common intention need to be held guilty of causing death of the deceased with fatal assault made by them. Hence the submission advanced by learned counsel for appellants that appellant No.1 Anandrao deserves to be acquitted in the absence of any evidence on record, cannot be accepted. His presence at the spot is proved. His involvement in the assault is also proved. From the mere fact that he was not ordinarily residing in the village and had come from Mumbai on that day itself is not sufficient to exculpate him from the offence. It may be true that he has not himself carried the weapon when he came to the spot. But evidence on record categorically proves that he has taken the sickle from the hands of his brother appellant No.2 Balasaheb and inflicted two blows on the thighs of the deceased, out of which one blow proved to be fatal. The evidence on record also proves that while leaving the spot, he has carried the sickle with him. Both the appellants have assaulted the deceased simultaneously. In such

circumstances, the appellant No.1 Anandrao cannot get the benefit of doubt. His involvement through out the incident is sufficiently proved on record. While his brother was assaulting the deceased with sickle and deceased was trying to save himself from the assault, appellant No.1 Anandrao has pushed the deceased and fell him on the ground. After his brother appellant No.2 Balasaheb assaulted the deceased, appellant No.1 has again assaulted the deceased with sickle on the thighs so as to prevent the deceased from running away from the spot. It was he and his brother- the appellant No.2, both of them have threatened P.W.10 Mahadeo not to intervene in the assault to save the deceased. In such circumstances it can hardly be accepted that role of appellant No.1 Anandrao is such so as to extend him the benefit of doubt. Resultantly, we are of the considered opinion that the trial Court has rightly convicted both the appellants for the offence under Section 302 r/w 34 of the Indian Penal Code. The appeal, therefore, holds no merit. Hence appeal stands dismissed confirming the conviction and sentence of both the appellants.

26. The bail bonds of appellant No.1 Anandrao Patil stands cancelled. He shall surrender before learned Sessions Court within a period of 12 weeks from the date of this order, failing which the learned Sessions Judge to take steps to take him in custody to undergo his remaining sentence.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed judgment.