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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 351 OF 2010

Pratap Anandrao Kanerkar
Age 34 yrs. Occ. Agri.
R/o Satave, Tal. Panhala
Dist. Kolhapur

.. Appellant
(Org. Accused No.2)

Vs.

The State of Maharashtra

.. Respondent

WITH
CRIMINAL APPEAL NO. 352 OF 2010

Hambirrao Bhauso Khamkar
Age 42 yrs. Occ. Agri.
R/o Satave, Tal. Panhala,
Dist. Kolhapur

.. Appellant
(Org. Accused. No.5)

Vs.

The State of Maharashtra

.. Respondent

Mr. Niteen Pradhan i/by Mr. Vishwajeet Mohite a/w Ms. Shubhada Khot
for appellants.

Mr. H. J. Dedhia, APP for State.

CORAM: P. V. HARDAS &
A. S. GADKARI, JJ.

JUNE 11, 2015.

ORAL JUDGMENT [Per P. V. Hardas, J.] :

1. The appellants/Original Accused No.2 and Original Accused No.5, who stand convicted for offence punishable under Sections 302 read with Section 34 and 201 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life and each accused to pay fine of Rs.2000/-, in default of which to undergo further imprisonment for six months, with no separate sentence being passed for offence punishable under Section 201 read with 34 of IPC, by the Additional Sessions Judge, Kolhapur, by judgment dated 5/4/2010, in Sessions Case No. 35 of 2008, by these appeals challenge their conviction and sentence.

2. Facts, as are necessary for the decision of these appeals, may briefly be stated thus :-

PW 20 – API Shahaji Shinde, who was attached to the Kodoli Police Station and was on Bandobast duty on 25/11/2007, received information on his mobile at about 17.20 hrs. about murder being committed at Borpadale Phata. PW 20 – API Shinde along with police staff reached the Borpadale Phata and noticed the dead body of deceased

Bhagwan Gorad. He also noticed that a crowd had gathered there. PW 20 – API Shinde thereafter called PW 1 – Shridhar son of deceased Bhagwan to the scene of the incident. PW 1 – Shridhar identified the dead body to be the dead body of his father Bhagwan. Report of PW 1 – Shridhar was then recorded at Exh. 27. The report of PW 1 – Shridhar was then referred to the police station along with a covering letter of PW 20 – API Shinde for registration of the offence. The letter is at Exh. 97. Accordingly, an offence was registered vide Crime No. 113 of 2007 at the Kodoli Police Station. The entry in the station diary regarding registration of the offence is at Sr. No. 24 and is at Exh. 98.

PW 20 – API Shinde then drew the inquest panchanama of the dead body of deceased Bhagwan, in the presence of panchas, at Exh. 37. The dead body was referred for postmortem examination along with the report at Exh. 38. A scene of the offence panchanama was then drawn, in the presence of panchas, at Exh. 53. Statements of four witnesses were recorded, who were present at the scene of the incident. Clothes of deceased Bhagwan were seized under seizure memo at Exh. 40, in the presence of panchas. On 26/11/2007, statements of witnesses were recorded. Accused – Sharad, Sachin and Anandrao were arrested on

27/11/2007 under arrest panchanamas at Exhs. 41, 42 and 43. On 28/11/2007 accused no. 5 – Hambirrao and accused no.2 – Pratap were arrested under the arrest panchanamas at Exhs. 99 and 100. A letter was addressed to the Medical Officer by sending a sickle to solicit the opinion whether the injuries to the deceased could be caused by the said weapon. Statements of witnesses Sarita and Suvaraz were recorded and on 29/11/2007 accused – Krishnat was arrested. On 30/11/2007, the seized property was referred to the Chemical Analyzer under requisition at Exh. 96.

On 1/12/2007, during custodial interrogation, accused no. 5 – Hambirrao expressed his willingness to point out the place where the weapon and the motorcycle had been concealed as well as the place where the clothes were burnt. A memorandum was accordingly recorded, in the presence of panchas, at Exh. 48. Accused – Hambirrao led the police and the panchas to one cattle shed at Devwadi and pointed out the weapons and the motorcycle. Accused – Hambirrao then led the police and the panchas to Buvache Wathar and pointed out the place in the sugarcane field where clothes had been burnt. Ash and pieces of burnt clothes were found and were accordingly seized under panchanama at Exh. 49. Statements of three

more witnesses were recorded and on 2/12/2007, the seized weapons sickle and dagger were referred to the Medical Officer. The Medical Officer opined vide his opinion at Exhs. 87 and 88. Accused were referred for collecting their blood sample and nail clippings. The remaining seized articles were thereafter referred to the Chemical Analyzer along with the requisition at Exh. 101.

On 3/12/2007, PSI Kamble recorded the statements of three witnesses. The letter was issued on 6/12/2007 requesting the Executive Magistrate for conducting Test Identification Parade. The said letter is at Exh. 102. A communication was addressed to the Judicial Magistrate, First Class, Panhala, for recording the statements of the witnesses under Section 164 of the Cr. P.C. The said letter is at Exh. 108. On 15/1/2008, the Executive Magistrate conducted the Test Identification Parade and submitted his report. 7X12 extract of the field where the ash and the half burnt clothes were found was seized. Call details from the mobile company were collected. Further to the completion of investigation, a charge-sheet against the accused was submitted.

Postmortem on the dead body of deceased Bhagwan was

conducted by PW 16 – Dr. Adhikrao Patil. PW 16 – Dr. Patil noticed the following external injuries :-

- (1) Incised injury over scalp, 7 cm x 1 ½ cm., scalp deep over right frontal area, anterior posteriorly placed 1 cm. right from midline, anterior and started at hair line over forehead and extended posteriorly, dark red blood clots present. Weapon mark seen over under-lining skull bone.
- (2) Incised injury over right parietal area, curved, 5 cm. x 1 cm. Depth between skull bone and scalp 2 ½ cm. dark red blood clot present.
- (3) Incised injury over left temporal area anterior posteriorly placed, at level of upper edge of left ear, 5 x 1 cm. scalp deep, dark red blood clot present.
- (4) Incised wound, 1 ½ cm. below No.3, 4 cm. x 2 cm. scalp deep, dark red blood clot present.
- (5) Incised wound, anterior-posteriorly placed at level of left ear lobule 6 cm. x 2 cm. depth 4 cm. cutting underlying sternocleidoid muscle just below mastoid bone dark red blood clot present.

- (6) Left ear pinna cut at three sides, at the level of injury No.3, 4 and 5. Incised wound, dark red blood clot present.
- (7) Incised wound over left sub-mandibular area, anterior-posteriorly placed, starting from chin, extending backward over neck, length 17 cm. depth 5 cm. cutting left sternocleidomastoid muscle, left carotid vessels, Larynx on left side, dark red blood clot present.
- (8) Incised wound over left side of neck, just above injury no.7. Anterior-posteriorly placed 9 cm.x 2 cm. depth 3 cm. cutting underlying structure dark red blood clot present.
- (9) Incised wound over left mastoid area, vertically placed scalp deep, 7 cm. 2 cm. dark red blood clot present.
- (10) Incised wound just below No. 7, anterior-posteriorly placed 6 cm. x ½ cm. skin deep 1 cm. dark red blood clot present.
- (11) Incised wound over left side of neck, anterior-posteriorly placed 1 ½ cm. below No.10, 8 cm x 2 cm depth 1 cm dark and blood clot present.
- (12) Incised wound over neck, anterior-posteriorly on right side transversally placed, 6 cm. x 1 cm. skin deep, dark red blood clot present.

- (13) Incised wound just below No. 12, parallel to No.12, 7 x ½ cm. skin deep, dark red blood clot present.
- (14) Incised wound over abdomen, 7 cm. downward and left laterally 7 cm. length, transverse, loops of small intestine protruding through wound.
- (15) Incised wound over right index finger at proximal I.P. Joint, distal part attached by skin tag laterally, dark red blood clot present.
- (16) Incised wound over right deltoid area laterally and right arm laterally, vertically placed 12 cm. superficial, dark red blood clots present.
- (17) Incised wound over left thumb posterior-laterally 6 cm. x 2 cm. skin deep exposing tendons, dark red blood clots present.
- (18) Incised wound over left wrist and extending proximally, over dorsal aspect, 6 cm. x 2 cm skin deep, underlying tendon exposed dark red colour blood clots present.
- (19) Incised wound over dorsal of left hand, over middle metacarpal bone, vertically placed 4 cm. x 1 cm. skin deep,

dark red blood clots present.

(20) “X” shaped scratches over left arm laterally, each arm of “X” 4 cm., dark red clotted blood present over injury.

(21) Incised wound over left elbow posteriorly, transversally placed 5 cm. x ½ cm. skin deep, dark red blood clots present.

(22) Incised wound over left scapular area, transversally placed at mid scapula 12 cm. x ½ cm. skin deep, dark red blood clot present.

(23) Incised wound at left infra-scapular area, obliquely placed 12 cm. x ½ cm. skin deep dark red blood clot present.

(24) Incised wound over left scapula, 3 cm. above the wound No.22, vertically, placed 3 cm. x 1 cm. skin deep, dark red blood clot present.

He opined that all the injuries were ante-mortem and were possible by sharp and hard object, excepting injury no. 20. On internal examination, he noticed haematoma and clotted blood around wounds over scalp. He also noticed the mark of weapon over the frontal bone under injury no.1. He, therefore, opined that the probable cause of death was

acute cardio-respiratory arrest secondary to hemorrhagic shock. The postmortem report is at Exh. 85. He has further opined that the injuries were sufficient in ordinary course of nature to cause death.

On 2/12/2007, the Kodoli Police referred two weapons under the letter at Exh. 86. He expressed his opinion by his letter at Exh. 88. He has opined that injury at Sr. No. 14 and the corresponding internal injury were possible by Article No.2 – dagger. He has further opined that all other injuries, excepting injury no.20 were possible by the weapon, Article 1 – sickle.

3. On committal of the case to Court of Sessions, trial court vide Exh. 16 framed charge against the accused nos. 1 to 6 for offence punishable under Section 120-B, 302 read with Section 120-B, alternatively under Section 302 read with Section 34, 201 read with Section 120-B, alternatively 201 read with Section 34 of the IPC. The accused denied their guilt and claimed to be tried. Prosecution in support of its case examined 20 witnesses. The defence of the accused was of denial. The trial Judge upon appreciation of the evidence convicted and sentenced the appellants as afore-stated.

4. We have heard Mr. Niteen Pradhan, learned counsel for the appellants in both the appeals and the learned APP on behalf of the respondent – State. In order to effectively deal with the submissions advanced by before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

Prosecution has examined several eye witnesses, but excepting PW 4 – Yuvraj, none of the eye witnesses supported the prosecution. The conviction of the appellants, therefore, rests on the sole testimony of PW 4 – Yuvraj, who is an eye witness to the incident. Prosecution has unfolded its case by describing the motive for the accused for committing the crime through the evidence of PW 1 – Shridhar, son of deceased Bhagwan.

5. PW 1 – Shridhar deposes that deceased Bhagwan was working as a Headmaster in the Primary School at Arale. The accused reside in the same lane in which Shridhar was residing. The accused belonged to Maratha community, while Shridhar and his father belonged to the Dhangar community. Dhananjay, brother of PW 1 – Shridhar, had a love affair with Rupali, daughter of accused no. 4 – Krishnat. In May, 2007, Rupali eloped

with Dhananja and were married. Family members of Rupali were against the marriage and, therefore, the accused started threatening deceased Bhagwan and other family members. Shridhar deposes that they all left the house as well as the village. Accused – Krishnat, Hambirrao, Pratap, Sachin and others had kidnapped the relatives of Shridhar in order to learn the whereabouts of Dhananjay and Rupali. An offence was accordingly registered and the accused were arrested. PW 1 – Shridhar, deceased Bhagwan and others thereafter started residing in their own house as the police had given them protection. The accused, however, did not relent and continue to brandish the axe at PW 1 – Shridhar and his other family members.

Dhananja and Rupali were residing at Sonavade at the house of Yeshwant. On the day prior to the incident, deceased Bhagwan, brother of PW 1 – Shridhar and mother of PW 1 – Shridhar had gone to village Sonavade. Mother and brother of Shridhar were, however, sent back to the village. On 25/11/2007 deceased Bhagwan came to Kolhapur at the house of one Tanaji, a relative of Bhagwan, for reaching Dhananjay and Rupali to the house of Tanaji. Dhananjay and Rupali, accompanied by Tanaji then boarded the Bus for going to Sawantwadi. Deceased Bhagwan had

informed PW 1 – Shridhar at about 12 noon that deceased Bhagwan was proceeding to attend the training camp at Asurle Porle. In the evening, PW 1 – Shridhar returned from the agricultural field and at that time one police constable More informed him that deceased Bhagwan was being assaulted and, therefore, requested Shridhar to accompany him. PW 1 – Shridhar accompanied by Nayan Kale then went along with the police constable to Borpadale Phata. The police pointed out the dead body of deceased Bhagwan. Report of PW 1 – Shridhar was then scribed at Exh. 27.

6. In cross-examination, he has admitted that in respect of the case filed for kidnapping of the relatives of PW 1 – Shridhar, accused had been acquitted. He has admitted that deceased Bhagwan was not owning a mobile phone. He has also admitted that they were taking precautions that the villagers should not know the whereabouts of Dhananjay and Rupali. He has admitted that he does not know if the police had enquired with the persons who were present at the scene of the incident or the shop-keepers about the incident. He has admitted that he learnt about the names from the persons who were present there and accordingly had named the accused in the report.

7. Prosecution has examined PW 14 – Rupali, daughter of accused no.4 – Krishnat. Rupali deposes that deceased Bhagwan was her father-in-law. She also deposes that she was in love with Dhananjay, who was not liked by her family members i.e. the accused. Since the accused were opposing her marriage, she and Dhananjay eloped and were married. She also deposes that after her marriage, there was danger to her life and to the life of Dhananjay and, therefore, they were staying at different places. Deceased Bhagwan was alone knowing the place where Rupali and her husband Dhananjay were residing. She has admitted that after her marriage, accused – Krishnat, his brother accused – Pratap, Hambirrao and others were searching for them. She further deposes that on 25/11/2007, deceased Bhagwan reached them upto the Bus Stand at Kolhapur. Rupali and others boarded the Bus for Sawantwadi at about 1.30 in the noon and deceased Bhagwan then went for attending the training camp at Porle. She deposes that she learnt in the evening that deceased Bhagwan had been murdered.

8. Prosecution then relies on the testimony of PW 4 – Yuvraj, who deposes that he along with his father was engaged for preparing statutes of different Gods and used to sell it at different places. According to Yuvraj

on 25/11/2007 he had gone to Paijarwadi for exploring the demand for statutes there. After making necessary enquiry at Paijarwadi and taking the blessings in the temple, he started from Paijarwadi at about 3 p.m. He noticed one person coming out of the temple and proceeding on his motorcycle towards Kolhapur. Yuvraj, therefore, requested that person to take him upto Borpadale Phata. Yuvraj accordingly sat on the motorcycle and reached the Borpadale square. He was standing there waiting for the Bus at the Borpadale Phata and noticed two persons coming from the Kodoli side. At that time another person who was standing in the square started saying do not assault him and started running away. At that time, one of the persons, who had medium build took out a sickle like weapon from the bag and handed over it to the person who was hefty in his build. That hefty person then inflicted blow of the weapon on the left side of the neck of that person who was running away. The hefty person has been identified as accused no. 2 – Pratap, while the person who was assaulted was deceased Bhagwan. Thereafter, the person who had medium build took out a dark coloured weapon from the bag and stabbed it in the stomach of the injured. The person with the medium build has been identified as accused no. 5 – Hambirrao. The two assailants then went near a shop took one motorcycle and proceeded towards Kodoli. The incident

had occurred at about 4.30 to 5 p.m. According to Yuvraj he was standing at the scene of the incident and after about 15 minutes the police arrived at the scene of the incident. The police enquired from him and others about the incident and accordingly his statement was recorded. He has accordingly identified accused no.2 – Pratap as the hefty person, while he has identified accused no. 5 – Hambirrao as the person with medium build. He has also identified the weapons. Yuvraj further deposes that two months after the incident, he was called for Test Identification Parade and had identified both the assailants.

9. In cross-examination, he has admitted that he had gone to Paijarwadi for the first time on the date of the incident. Omission has been elicited from his 164 statement that he had not stated that when he came out of the temple, he noticed one person coming out of the temple and proceeding on the motorcycle to Kolhapur and that he requested that person to take him upto Borpadale Phata. He has admitted that the injured was wearing a white coloured shirt and blackish coloured trouser, but he had not paid much attention towards the dress. He has admitted that he does not remember the clothes worn by the assailants. He has admitted that the assailants had caught the victim on the road itself. He has admitted

that he had not gone near the injured, nor had he lifted the head of the injured to confirm if the injured was alive or dead. He has admitted that he was present at the Borpadale Phata till about 5.20 p.m. He has also admitted that the police had arrived at the scene of the incident and had recorded his statement at the scene of the incident itself. He has admitted that in his presence the inquest panchanama was drawn.

10. Prosecution has examined PW 16 – Dr. Patil, who had performed the postmortem examination. In cross-examination, he has admitted that deceased might have died instantaneously after sustaining the injuries. He has admitted that the deceased may have taken his food 2 to 3 hours prior to his death.

11. Prosecution has also examined PW 18 – Shrirang Tambe, who had performed the Test Identification Parade and PW 15 – Shivaji Patil, a panch at the Test Identification Parade. PW 18 – Tambe deposes about conducting the Test Identification Parade of accused no.2 – Pratap and accused no. 5 – Hambirrao. He also deposes about PW 4 – Yuvraj identifying both accused nos.2 and 5. He also deposes about other eye witnesses identifying these appellants/accused.

In cross-examination, he has admitted that the accused had been produced before him on 14/1/2008 also at about 6.45 p.m. Though he has been cross-examined, nothing of substance has been elicited in the cross-examination.

12. Mr. Niteen Pradhan, learned counsel for the appellants, has urged before us that the Test Identification Parade would stand vitiated as the identifying witness i.e. PW 4 – Yuvraj has not stated before the Magistrate the exact overt act attributed to the appellants/accused but has only identified them. PW 4 – Yuvraj in his substantive evidence before the court has attributed the overt act to the appellants/accused. His failure to state so before the Magistrate at the time of the identification parade, in our opinion, would not vitiate the Test Identification Parade. We thus find that PW 4 – Yuvraj had correctly identified accused no.2 – Pratap and accused no.5 – Hambirrao to the same assailants whom he had seen on the day of the incident assaulting deceased Bhagwan.

13. Admittedly, the conviction of the appellants rests on the sole testimony of PW 4 – Yuvraj. The other eye witnesses have not supported

the prosecution and were, therefore, declared hostile. Mr. Niteen Pradhan, learned counsel for the appellants, by placing reliance on the judgment of the Supreme Court in **Vadivelu Thevar vs. State of Madras [AIR 1957 SC 614]**, has urged before us that the testimony of PW 4 – Yuvraj falls in the category of “wholly unreliable” and, therefore, cannot be acted upon for basing the conviction of the appellants. It is further urged by Mr. Niteen Pradhan, learned counsel for the appellants, that PW 4 – Yuvraj attributes only two injuries being caused to the deceased by the appellants, while the postmortem report completely falsifies the eye witness as several injuries had been noticed by PW 16 – Dr. Adhikrao Patil. The learned counsel for the appellants has, therefore, urged before us that in the absence of any other evidence which would corroborate the testimony of PW 4 – Yuvraj, it would be extremely hazardous to accept the same for sustaining the conviction of the appellants. Learned APP has urged before us that PW 4 – Yuvraj has withstood the cross-examination on behalf of the accused and has emerged un-scarred. It is urged before us by the learned APP that statement of PW 4 – Yuvraj was recorded immediately at the scene of the incident itself and, therefore, his presence at the scene of the incident cannot be doubted.

14. It is true that a conviction can be based on the sole testimony of eye witness and the law does not require the testimony of the sole eye witness to be corroborated if the court finds that implicit reliance can be placed on the testimony of the sole witness. In the present case, PW 4 – Yuvraj has described as to how he reached the scene of the incident. He has also deposed about the overt acts attributed to the appellants. PW 4 – Yuvraj remained at the scene of the incident till the arrival of the police and the statement of PW 4 – Yuvraj was recorded by the police at the scene of the incident itself. The presence of PW 4 – Yuvraj at the scene of the incident, therefore, cannot be doubted. Deceased Bhagwan as well as the accused were strangers to PW 4 – Yuvraj and, therefore, PW 4 – Yuvraj had no earthly reason for falsely implicating the appellants/accused. The identification of the appellants in the court is amply corroborated by the identification of the appellants in the Test Identification Parade. The incident had lasted for some time and, therefore, PW 4 – Yuvraj had every opportunity of observing the appellants/accused and in fact had given a description of the appellants/accused. A witness is not supposed to recount and tell with exactitude the number of blows given to the deceased. In a general statement, PW 4 – Yuvraj has only deposed that both the appellants/accused assaulted the deceased without specifying the number

of blows given by each of the accused. Thus, failure to state the exact number of blows given by each of the accused to the deceased cannot be a ground for discarding the evidence of an otherwise reliable witness. PW 4 – Yuvraj has withstood the cross-examination and at the close of the cross-examination has emerged as a reliable witness. In our opinion, the testimony of PW 4 – Yuvraj can be classified as the testimony of a wholly reliable witness and, therefore, no corroboration is necessary. Since we find that PW 4 – Yuvraj is reliable witness on whom implicit reliance can be placed, in our opinion, the conviction of the appellants can certainly be sustained on the basis of solitary testimony of PW 4 – Yuvraj.

15. Thus, after giving our anxious consideration to the submissions advanced before us by the learned counsel for the parties, in our opinion, the prosecution has proved the offence against the appellants beyond reasonable doubt. There is no merit in the present appeals and Criminal Appeal No. 351 of 2010 and Criminal Appeal No. 352 of 2010 are dismissed, confirming the conviction and sentence of the appellants.

(A. S. GADKARI,J.)

(P. V. HARDAS,J.)