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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.377 OF 1998

Ramu Soma Pawar	]	
age: 50 years,	]	
residing at Gatesh Khurd	]	<u>... Appellant</u>
Taluka: Wada	]	Original accused.
	]	
At present r/o Bhaveghar	]	
Tal. Wada, District. Thane	]	

V/s.

The State of Maharashtra Respondent] ... Respondent.

Mr. Abhaykumar Apte, appointed advocate, for Appellant.

Mrs. Sangeeta D. Shinde, A.P.P., for the Respondent-State.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : 6TH MAY, 2015.

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

1. The appellant, who stands convicted by the Additional Sessions Judge, Thane, by his judgment dated 7th January, 1998, in Session Case No.15 of 1993, for the offences punishable under Section 302 and 452 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- in default to suffer rigorous imprisonment, on the first count, and rigorous imprisonment for two years and to pay fine of Rs.300/- in default to suffer rigorous

imprisonment for one month on the second count, by this appeal challenges his conviction and sentence.

2. Facts, as are necessary for deciding this appeal, may be stated as under :-

On the night of 6.6.1992, while P.W.7 PSI Shivaji Bandgar was patrolling in the limits of Datesh Khurd village, Police Patil and Sarpanch of the village, gave information to him that one murder was committed at village Datesh. He, therefore, immediately went to the spot and learnt from the persons present there that one Shankar Pawar was killed. He went to the house of Shankar Pawar and there Dharma Pandu Pawar, cousin brother of the appellant gave him information of the incident. Accordingly he recorded statement of Dharma Pawar on the spot itself and sent said statement Exh.18 to Wada Police Station, for registration of the crime. He continued to remain at the spot itself and then conducted the inquest panchnama on the dead body of Shankar Pawar. He noticed that right leg of the deceased was amputated from below knee joint and there was bleeding injury on the right arm. He made those notings in the inquest panchana Exh.10 which was prepared in the presence of panch P.W.3 Sitaram. After the inquest panchanama, the dead body was referred by him to Primary Health Centre, Wada for postmortem examination. At the spot itself, he has then drawn the scene of offence panchanama Exh.11 in the presence of

P.W.3 panch Sitaram. From the spot, he has collected blood smeared mud and simple mud, one gunny clothe stained with blood and one half shirt.

3. Meanwhile the offence was registered and further investigation of the said crime was handed over to P.W.7 PSI Bandgar. On the same day, he has recorded statements of witnesses at the scene of offence itself and those witnesses are P.W.1 Vishnu, P.W.2 Vilas and P.W.5 Madhukar. On the basis of the information transpired from their statements, P.W.7 PSI Bandgar has arrested the present appellant on the same day at 11.00 p.m. vide panchanama Exh.13. At the time of arrest, Muddemal Article No.5- blood stained clothes- of the appellant came to be seized under the said panchanama.

4. On the next day P.W.7 PSI Bandgar has recorded statements of six more witnesses, including P.W.6 Raghunath Bhoje. During police custody, appellant expressed his willingness to show the spot where he has concealed the weapon of assault- the sickle. His statement was reduced to memorandum panchanama Exh.20 in the presence of P.W.4 Panch Prabhakar. Thereafter the appellant guided P.W.7 PSI Bandgar and P.W.4 Panch Prabhakar to village Kudus and he produced one sickle from the bushes. The blade of the said sickle was stained with blood. It was seized under panchanama Exh.20A.

P.W.7 PSI Bandgar has sent all the seized articles to Chemical Analyzer on 17.6.1992 vide his requisition letter Exh.29. The CA reports are produced on record at Exh. Nos 22 and 23. Meanwhile after the postmortem on the dead body was conducted by P.W.8 Dr. Deshpande, the postmortem report Exh.12 was received on 10.8.1992. Hence further to completion of investigation, P.W.7 PSI Bandgar, has submitted chargesheet in the Court against the appellant.

5. On the case being committed to the Sessions Court, the trial Court framed charge against appellant vide Exh.3. The appellant pleaded not guilty and claimed trial.

6. In support of its case, prosecution has examined in all 8 witnesses and on appreciation of their evidence, the trial Court held the guilt of the appellant to be proved on both the counts for offences punishable under Sections 452 and 302 of IPC and convicted and sentenced him, as aforesaid.

7. This judgment of the trial Court is the subject matter of this appeal. In this appeal, we have heard learned counsel for the appellant Shri. Abhaykumar Apte and learned APP for the State, Mrs. Sangeeta D.Shinde. In our considered opinion, in order to effectively deal with the rival submissions, advanced by them it would be useful to refer to the

evidence on record.

8. To prove the homicidal death of deceased Shankar, prosecution has placed reliance on the evidence of P.W.8 Dr. Vijay Deshpande, who has conducted postmortem examination on the dead body of Shankar, at Rural Hospital, Wada on 6.6.1992 in between 3.00 p.m. to 4.00 p.m. At the time of postmortem examination, he found following injuries.

1) Big incised wound on the flexor aspect of the right wrist joint. Deep wound having size 7" x 2 ½" x 1" deep, extending from the 1" below the lateral malleolus, extending above medially ulna artery, veins and muscles on that side cut.

2) Big wound of quadrangular shape, deep on the anterior aspect of the right leg, just below the knee joint. both bones fracture, transverse, fracture of tibia and oblique fracture of fibula, all the muscles cut. Tibial artery lacerated. Blood clots on the anterior and posterior aspect of leg, lower part of leg hanging.

9. According to him both the injuries were antemortem in nature and the cause of death was cardiorespiratory arrest, secondary to severe haemorrhage from the wounds. He has further opined that those injuries were sufficient in the ordinary course of nature to cause

death and those injuries might have been caused by sharp edged weapon like sickle (Muddemal Article No.4), which was shown to him at the time of recording his evidence. Though this witness is cross examined at length by learned counsel for defence, nothing worthwhile is elicited in his cross-examination to challenge the factum of homicidal death of the deceased Shankar. There is also supporting evidence of inquest panchanama at Exh.10 in which injuries found on the dead body of the deceased are noted in detail.

10. To prove the complicity of appellant in the offence, the prosecution has relied on the evidence of four witnesses before whom the deceased has made consistent oral dying declaration and out of them two witnesses had also seen the appellant running away from the spot with blood stained sickle in his hand. These four witnesses are viz P.W.1 Vishnu, P.W.2 Vilas, P.W.5 Madhukar and P.W.6 Raghunath. All these witnesses are residing near the house of the deceased. They are of the same village and hence knowing both the deceased and the appellant very well.

11. As per evidence of P.W.1 Vishnu, on the night of incident at about 1.00 a.m., he heard hue and cry from the house of deceased Shankar. Hence, he rushed to the house of Shankar Pawar, several other persons had also gathered there. He saw Shankar was lying in

injured condition with injury to his left hand and one leg was amputated. Shankar was, however, alive and he told him and other persons gathered there that appellant Ramu has assaulted him. As per his evidence, within half an hour, thereafter Shankar succumbed to the injuries. In his cross-examination, it is brought on record that about 5 to 6 persons had entered into house of Shankar, when Shankar had made said oral dying declarations.

12. Similar is the evidence of P.W.2 Vilas Pawar whose house is in the neighbourhood of house of deceased Shankar. According to him also on the night of assault, while he was sleeping in house, at about 1.00 p.m., he heard shouts of deceased that he was being assaulted by appellant Ramu. On hearing shouts, he rushed to the house of deceased. When he entered into the house alongwith the other neighbours, Shankar told them that appellant Ramu has assaulted him. At that time he saw that Shankar was having bleeding injury on his left hand and right knee. Again there is absolutely no cross examination of this witness on the material aspect of oral dying declaration made by deceased Shankar before him and the other witnesses.

13. Then there is evidence of P.W.5 Madhukar, who is also residing in the neighbourhood of the deceased. According to his

evidence, on hearing hue and cry from the house of the deceased at about 1.00 p.m., he rushed there and saw the appellant in the house of deceased. The appellant who was armed with sickle, after seeing him and the other persons, started running towards village Neruli. He entered into the house of Shankar and saw that he was lying injured with his one leg amputated and there was also injury on his hand. Shankar told him that he was assaulted by the appellant. In his evidence before the Court, he has identified the Muddemal Article No.4 sickle which according to him was in the hands of appellant, when he ran away. In his cross examination it is brought on record that the house of the deceased was just adjacent to his house. Further, he has stated that while going towards the house of deceased, he has carried with him kerosene burning lamp in his hand. He has further stated that though it was dark night, there was some moon light. Hence he could see in that light and also in the light of kerosene lamp, the appellant running away with sickle in his hand. As per his further cross-examination, his statement was also recorded on the same day early in the morning by the police.

14. Further there is evidence of P.W.6 Raghunath who is elder brother of P.W.5 Madhukar. He was knowing both the deceased and appellant residing nearby since his childhood. As per his evidence also on that night, after hearing hue and cry from the house of deceased, he

himself and his brother P.W.5 Madhukar started running to the house of the deceased. There were some other neighbours also. At that time, he saw the appellant running away from the house of deceased. The appellant was armed with one sickle. Then all of them entered into house of deceased. One leg of deceased was amputated and there were injuries on his person. At that time deceased Shankar told them that the appellant has assaulted him. In evidence before the Court, he has also identified Muddemal Article No.4 sickle. In his cross-examination, it is brought on record after coming out of his house on hearing hue and cry, when he was standing in front of his house, he saw the appellant coming from the house of deceased and running away. The distance between the road on which appellant was running away and his house was hardly of 10 feet.

15. The testimonies of these four witnesses, whose statements are recorded immediately after the incident on the same day in which they have disclosed all these material facts and whose presence at the time of incident is natural, in our opinion, constitute clinching piece of evidence to prove complicity of the appellant in the homicidal death of Shankar. Absolutely nothing is elicited in their cross-examination to make any dent in their evidence. Their evidence is cogent, consistent and found to be reliable and inspiring confidence in the judicial mind. Their evidence, thus, puts seal on the involvement of the appellant in

the assault on deceased.

16. Further there is also corroborating evidence of P.W.7 Investigation Officer PSI Bandgar, who has deposed about the recovery of weapon of assault, the sickle, at the instance of appellant under Section 27 of the Evidence Act, that too immediately on the next day of incident. Said weapon was seized under panchanama Exh.20 in pursuance of memorandum of the appellant. The said weapon was having blood stains thereon and as per CA report Exh.22, the blood stains thereon were found to be of human blood of "O" blood group. The blood stains on clothes of the deceased and the gunny clothe which was seized from the spot, were found to be of blood group "O". The clothes of the appellant which were seized on his arrest were also found to be having blood stains of blood group "O", thereby clearly establishing necessary link between the appellant and the commission of the offence.

17. To sum up, therefore, in this case, there is more than sufficient clinching evidence on record to prove the guilt of the appellant for both offences punishable under Sections 452 and 302 of IPC. The appeal, therefore, holds no merit and is liable to be dismissed. Consequently, Criminal Appeal stands dismissed confirming the conviction and sentence of appellant.

18. The fees payable to learned counsel appointed to represent the appellant are quantified at Rs.5,000/-.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]