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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 95 OF 2009

ASHOK HANUMANTA KAJERI

Age: 21 years,

Residing at : Kurla Garden,

Near Kurla Police Chowky

Near Datta Auto Center, Kurla (West),

Mumbai.

(Presently lodged in Nashik Central Prison

..Appellant
(Accused)

Vs.

THE STATE (at the instance of

Dharavi Police Station)

(C.R. No.34/07) (C.C.No.518/PW/2007)

..Respondent

Ms. Rohini M. Dandekar appointed Advocate for the Appellant.

Ms. Rajshree Gadhvi, APP for Respondent-State.

**CORAM: SMT. V.K. TAHILRAMANI &
A.S. GADKARI, JJ.**

Date: 1st September 2015.

Oral Judgment (Per Smt. V.K. Tahilramani, J.):

1 The appellant original accused has preferred this appeal against the judgment and order dated 11th November 2008 passed by the learned 5th Ad-Hoc Additional Sessions Judge, Sewree, Mumbai in S.C. No.487 of 2007. By the said

judgment and order, the learned Sessions Judge convicted and sentenced the appellant under Section 302 of the Indian Penal Code and sentenced him to suffer R.I. for life and to pay fine of Rs.5000/-, in default of payment of fine R.I. for two years.

2 The prosecution case can briefly be stated as under:

(i) Deceased Hanumanta was the father of the appellant. Hanumanta had two wives, the first wife was Samadhan. The the appellant was the son of Samadhan. The second wife of the deceased was PW-2 Laxmi. Samadhan along with appellant left the house of her husband Hanumanta when the appellant was about one year old. Thereafter Samadhan did not come back. However, once in a while the appellant used to meet Hanumanta. The appellant had a grudge against his father as according to him his father had abandoned him when he was one year old.

(ii) The incident took place on 13.2.2007. On that day at about 6.35 p.m. the appellant assaulted his father Hanumanta with a knife in front of O.N.G.C. building and Hello Communication Center. This was situated at Mukund Nagar, Dharavi, Mumbai. PW-1 ASI Mohite and PW-6 Police Constable

Nangare were on patrolling duty in mobile van. When they reached near O.N.G.C. building, they saw that a crowd of people had gathered in front of Hello Communication Center. They went there in their mobile van. They got down from the said mobile van. They saw the appellant was giving blows with knife on Hanumanta who was lying on the road. ASI Mohite caught hold of the right hand of the appellant in which hand the appellant was holding a knife. ASI Mohite snatched the knife from the right hand of the appellant. They put the appellant in the mobile van. They took injured person in the mobile van to the hospital. In the hospital the injured person i.e. Hanumanta was declared dead. ASI Mohite then lodged FIR (Exhibit 10). Thereafter, investigation commenced. The appellant was arrested. The blood stained clothes on the person of appellant were seized under panchanama. Knife which was found in the hand of the appellant was also seized under panchanama. The dead body of Hanumanta was sent for postmortem.

(iii) PW-10 Dr. Dere conducted postmortem on the dead body of Hunumanta. In all he found 12 injuries, out of them 11 injuries were stab wounds and one was incised wound. Out of the stab wounds five stab wounds were on the chest and one

stab wound was on the stomach due to which intestines had came out. The rest of the injuries were on the other parts of the body like inter coastal space, clavicle region, lumber region etc. After completion of investigation, chargesheet came to be filed.

3 Charge came to be framed against the appellant under Section 302 of the Indian Penal Code and under Section 37(i) (a) read with Section 135 of Bombay Police Act. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para-1 above. Hence, this appeal.

4 We have heard the learned Counsel for the appellant and the learned APP for the State. We have carefully considered their submissions, facts and circumstances of the case, judgment passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the

appellant assaulted his father Hanumanta with a knife and caused his death.

5 Conviction is mainly based on the evidence of three eye-witnesses i.e. PW-1 ASI Mohite, PW-6 Police Constable Nangare and PW-7 Raghu Shetty. PW-1 ASI Mohite has stated that on 13.2.2007, he was on patrolling duty in mobile van. Police Constable Nangare (PW-6) was driving the said mobile van. When they reached in front of O.N.G.C. building they saw that a crowd had gathered in front of Hello Communication Center which was situated on the opposite side of the O.N.G.C. building. They went to the spot in their mobile van. They got down from the mobile van. They saw one person (appellant) was giving blows with knife on the other person who was lying on the road. PW-1 ASI Mohite has identified the appellant as the very same person who was assaulting the other person with knife. ASI Mohite went behind the appellant and caught his right hand in which hand the appellant was holding a knife. ASI Mohite snatched the knife from the right hand of the appellant. They put Hanumanta in the mobile van. ASI Mohite then took the appellant to the police station and handed over the appellant

and the knife to the duty officer of Dharavi police station. In the meantime Hanumanta was taken to the hospital where Hanumanta was declared dead. ASI Mohite then lodged FIR.

6 PW-6 Police Constable Nangare, the second eye-witness has stated that on 13.2.2007, he was on duty at Dharavi police station as police constable-cum-driver. On that day he along with ASI Mohite and Constable Jadhav went for patrolling duty. When they reached in front of O.N.G.C. building, they saw that a crowd had gathered in front of Hello Communication Center which was situated opposite O.N.G.C. building. They went to the spot in their mobile van. When they got down from the said mobile van, they saw one person was lying on the footpath and other person was giving blows with knife on the person who was lying on the road. Police Constable Nangare has identified the appellant as the very same person who was giving blows with knife on the person who was lying on the road. He has identified the knife, article-5 as very same knife which was in the hand of the appellant. It may be stated here that PW-1 Mohite has also identified the knife, article-5 as the same knife which was in the hand of the appellant.

7 The last eye-witness is PW-7 Raghu Shetty. He was working as a Manager in Hotel Raj Palace which was situated opposite O.N.G.C. building. He has stated that Hello Communication Center was situated towards right side of their Hotel. Raghu Shetty has stated that on 13.2.2007 at about 6.30 p.m. a crowd of people had gathered in front of Hello Communication Center. He went to the spot. He saw the appellant was saying that the other person was his father and his father had caused a lot of trouble to him. The appellant assaulted the other person i.e. his father in the stomach. Thereafter three policemen came there. They caught hold of the appellant and put him as well as injured person in the police van.

Nothing has been elicited in the cross-examination of any of these three eye-witnesses which would cause us to disbelieve their testimony. We find their testimony to be cogent, convincing, and reliable and hence, we have no hesitation in relying on the same.

8 In addition to the evidence of these three eye-

witnesses, the prosecution is relying on the circumstance of the seizure of blood stained clothes which was on the person of the appellant at the time of the incident and his arrest. PW-13 Mohammed Shaikh, panch-witness has deposed on this aspect. He has stated that on 13.2.2007 he was called at police station. The appellant was present at the police station. Police seized the clothes i.e. gray colour T-shirt, and gray colour pant of the appellant. There were fresh blood stains on the pant on knee portion. This witness has also deposed about the seizure of article-5 knife. The said knife and clothes of the appellant was sent to the C.A. along with clothes of the deceased. All the clothes of the deceased were found to be stained with blood of "B" group. Moreover, the CA report (Exhibit-36) shows that the blood group of deceased was "B". The clothes of the appellant were found to be stained with blood of "B" group. No explanation has been furnished by the appellant for the presence of blood stains of "B" group on his clothes. Thus finding of blood stains of "B" group which is the group of the deceased on the clothes of the appellant is a highly incriminating circumstance.

9 It is the prosecution case that the appellant assaulted his father Hanumanta with a knife and caused his death. The appellant was caught red handed with the knife Article 5 in his hand which was snatched by PW-1 ASI Mohite. This knife was seized under panchanama. PW-13 panch-witness Mohammed Shaikh has deposed on this aspect. The knife was sent to Chemical Analyzer and as per C.A. report Exhibit.60 the knife was found stained with blood stains of "B' group. This further corroborates the prosecution case.

10 As stated earlier it is the prosecution case that the appellant assaulted his father Hanumanta with a knife which led to the death of Hanumanta. The medical evidence also corroborates the prosecution case. PW-10 Dr. Dere conducted postmortem on the dead body of Hanumanta. On external examination he found in all 12 injuries, out of these 12 injuries, 11 injures were stab wounds and one was an incised wound. Out of the 11 stab wounds five stab wounds were on chest and one stab wound was on the stomach due to which the intestines had came out. The rest of the injuries were on the other parts of the body like inter coastal space, clavicle region, lumber region etc.

On internal examination Dr. Dere found there was puncture over upper lobe of right side lung and peritoneum was torn. In the opinion of Dr. Dere the injuries were possible by knife, article-5. Dr. Dere opined that all the external injuries seen on the dead body of Hanumanta were sufficient in the ordinary course of nature to cause death.

11 On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the appellant had committed murder of his father Hanumanta by assaulting him with knife. Thus, we find no merit in the appeal. Appeal is dismissed.

12 We quantify legal fees to be paid by the High Court Legal Services Committee to Ms. Rohini Dandekar at Rs.5000/-

13 Office to communicate this order to the appellant who is in jail.

(A.S. GADKARI, J.)

(SMT. V.K. TAHILRAMANI, J.)

CERTIFICATE

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