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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 209 OF 2007

Ramesh Shiwa Ghadge
An Adult, Occ: Labourer
Resident of Waghripada,
R.No.578, on the loft, Road No.5,
Khar (W), Mumbai 400 052

.. Appellant

Vs.

The State of Maharashtra

.. Respondent

Dr. Yug Mohit Chaudhary for appellant.
Mrs. Sangeeta D. Shinde, APP for State.

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

MARCH 03, 2015.

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

1. The appellant, who stands convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs.1000/-, in default of which to undergo RI for two years, by the 10th Adhoc Additional Sessions Judge, For Greater Mumbai at Sewree, by judgment dated 15/09/2006, in Sessions Case NO. 463 of 2006, by this appeal challenges his conviction and sentence.

2. Facts as are necessary for the decision of this appeal may be stated thus;-

PW 7 – PSI Laxman Deshmukh, who, on 19/3/2006, was attached to the Khar Police Station and was on duty, received information at about 3.50 p.m about a dead body lying in front of Tara Mahal Building at Khar (West). PW 7 – PSI Deshmukh took the necessary entry in the station diary and proceeded towards the scene of the incident. In the presence of two panchas, the inquest panchanama of the dead body of deceased Bajirao, who was identified by his brother, was drawn. Statement of one Suresh Ghadge, brother of deceased was also recorded. The dead body was forwarded to the Cooper Hospital. On the same day at about 10.30 p.m., PW 1 – Jitesh Pujari, nephew of deceased Bajirao lodged his report at Exh. 13. A scene of the incident panchanama was also drawn in the presence of panchas at Exh. 16. The appellant / accused was arrested at 10.55 p.m. under an arrest panchanama at Exh. 17. The clothes on the person of the appellant were also seized. PW 7 – PSI Deshmukh recorded the statements of other witnesses.

PW 9 – PSI Rajesh Salvi, who was attached to the Khar Police Station was entrusted with the investigation of Crime No. 110 of 2006. The appellant during custodial interrogation expressed his willingness to point out the place where an iron pipe had been concealed. A memorandum was accordingly recorded in the presence of panchas at Exh. 19. The appellant led the police and the panchas to a place in front of the Clinic of Dr. Nagpal and produced an iron pipe from the ceiling of a shop which was seized in the presence of panchas at Exh. 20. Statements of witnesses were recorded and further investigation was then entrusted to PW 8 - PI Popat Tivatane.

PW 8 – PI Popat Tivatane, who was attached to Khar Police Station was entrusted with the investigation of Crime No. 110 of 2006. On the basis of the statement of the appellant under Section 27, an iron pipe was recovered. Supplementary statement of Suresh Ghadge was also recorded. Statements of other witnesses were recorded and the seized property was forwarded to the C.A. Further to the completion of investigation, a charge-sheet against the appellant was filed.

Postmortem on the dead body of deceased Bajirao was performed by PW 6 – Dr. Shivaji Kashare, who noticed the following external injuries :-

- (i) Linear contused abrasion over part of left back, extending from left lat of scapular region to para-vertebral region, oblique, reddish blue, size of 13 cm x 4 cm. (on dissection extra-vasation of subcutaneous and muscular blood is seen).
- (ii) Linear contused abrasion over part of left back parallel to injury no.(i) extending from inferior of left post-axillary region to left para-vertebral region, oblique, reddish blue, size of 15 cm x 4 cm and 0.5 cm. brownish thick margin bi lat. (On dissection extra-vasation of blood)
- (iii) Linear contused abrasion over left lat of knee joint, oblique reddish blue, 10 cm x 2 cm. (on dissection extra-vasation of blood is seen)
- (iv) Linear contused abrasion over left lat of lower leg, upper side, oblique, reddish blue 9 cm. x 2.5 cm. (on

dissection extra-vasation of blood)

- (v) Abrasion over left eyelid 2 cm x 1.5 cm., reddish.
- (vi) Contused abrasion right side of face below right eyeball
2 cm x 2 cm reddish.

On internal examination, he noticed fracture of left 6th, 9th ribs and hemorrhage ruptured on the left side. He had also noticed that the heart was enlarged which was diagnosed as an early signs of atherosclerosis. On the left side of the abdomen, hemorrhagic rupture at left posterior anterior-laterally was noticed. Spleen was found ruptured at post-lateral aspect 4 cm x 0.5 cm. x 1 cm. The left kidney upper pole was found contused. The Medical Officer, therefore, opined that deceased had died due to hemorrhage and shock due to injuries. The postmortem report is at Exh. 23

3. On committal of the case to Court of Sessions, trial court vide Exh. 2 framed charge against the appellant for offence punishable under Section 302 of the IPC. The appellant abjured his guilt and claimed to be tried. Prosecution, in support of its case, examined nine witnesses. The defence of the appellant was of denial. The trial court, upon appreciation

of the evidence, convicted and sentenced the appellant as afore-stated.

4. We have heard Dr. Yug Mohit Chaudhary, learned counsel for the appellant and the learned APP and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to briefly refer to the evidence of the prosecution witnesses.

5. Prosecution has examined PW 1 – Jitesh, nephew of deceased Bajirao, who deposes that deceased Bajirao and Suresh were his uncles. The appellant was also uncle of PW 1 – Jitesh. Deceased Bajirao and his other brothers, namely, Suresh and Ramesh were residing together in the ancestral house. PW 1 – Jitesh used to frequently visit the house for meeting his grandmother and also used to have lunch at her place. According to him, on the day of the incident i.e. on 18/3/2006 at about 9 to 9.30 p.m., he had visited the house of his grandmother in order to take his dinner. The appellant, who was present there, questioned PW 1 – Jitesh as to why he had visited the house for taking dinner. PW 1 – Jitesh replied that since the house belonged to his grandmother, he had visited the house. The appellant abused Jitesh and also slapped him. PW 1 – Jitesh informed

his mother about the incident, who also came to the said house. At that time, the appellant was in an inebriated condition. Deceased Bajirao also came out of the house carrying a tiffin and proceeded ahead. Mother of PW 1 – Jitesh had asked him if he had taken his meals. At that time, the appellant brought a rod and asked PW 1 – Jitesh to catch deceased Bajirao. PW 1 – Jitesh declined to do so and thereafter the appellant chased Bajirao. The appellant then assaulted Bajirao on his back and legs with the rod. PW 1 – Jitesh immediately rushed towards Bajirao and noticed that Bajirao had fallen down. The appellant later on carried Bajirao to the hospital. Jitesh also returned home. On the next day at about 2 p.m. he was informed by his uncle Suresh that Bajirao was serious. Jitesh, therefore, went to Tara Mahal building where Bajirao was lying, but noticed that Bajirao was not in a condition to reply. Jitesh, therefore, went to call his brother and learnt that Bajirao had succumbed to the injuries. He lodged his report at Exh. 13.

6. Though he has cross-examined, the cross-examination has not been able to dislodge him from his version that he had seen the appellant assaulting deceased Bajirao and Bajirao had fallen on account of the injuries. It does appear that the FIR at Exh. 13 came to be lodged about

24 hours subsequent to the incident. However, in our opinion, the delay by itself would not affect the credibility of this witness. Obviously, this witness had not realized the gravity of the assault, nor had he realized that Bajirao had sustained serious injuries which may jeopardize his life. In that background, therefore, failure to lodge the report immediately would not weaken the case of the prosecution.

7. Prosecution has also examined PW 5 – Basraj as an eye witness to the incident. PW 5 – Basraj depose that on the day of the incident at about 9.30 or 10 p.m. he had noticed the deceased and the appellant quarreling with each other and exchanging blows. According to PW 5 – Basraj, the appellant assaulted Bajirao with a pipe on his back and legs. Basraj claims that thereafter he had gone ahead and learnt that Bajirao had died.

8. The evidence of this witness is assailed on the ground that this witness gives a complete different picture of the incident. This witness deposes about the deceased and the appellant exchanging blows and also of the appellant assaulting deceased with a pipe, while PW 1 – Jitesh made no reference to the exchange of blows and the use of pipe as a weapon. In our

opinion, even if the evidence of PW 5 – Basraj is left out of consideration, the evidence of PW 1 – Jitesh proves the offence against the appellant beyond reasonable doubt.

9. Dr. Yug Mohit Chaudhary, learned counsel for the appellant has urged before us that looking to the situs of the injuries as well as the fact that the magnitude of the dispute between the appellant and the deceased was not so great as would drive the appellant to commit murder of deceased Bajirao. According to the learned counsel, therefore, the appellant, who had no intention to commit murder of deceased Bajirao would at the most be liable to be convicted for an offence punishable under Section 304 Part II of the IPC. The learned APP has opposed the submission and has supported the findings recorded by the trial court.

10. The evidence of PW 1 – Jitesh discloses that there were disputes between the appellant and his other brothers, including deceased Bajirao. The disputes were in relation to the property and the magnitude of the dispute was not such as would drive any person to commit murder of his own brother. In our opinion, therefore, looking to the situs of the injuries and the fact that the dispute was of a trivial nature, the intention of

the appellant to commit murder of deceased Bajirao is not spelt out on the basis of the evidence of the prosecution. The appellant, in our opinion, therefore, would be liable to be convicted for an offence punishable under Section 304 Part II of IPC. We are further informed that the appellant has been in jail since the date of his arrest i.e. from 19/3/2006 and has undergone almost nine years of imprisonment.

11. Accordingly, we partly allow this appeal and set aside the conviction and sentence of the appellant for offence punishable under Section 302 of the IPC and instead convict him for an offence punishable under Section 304 Part II of IPC and sentence him to Rigorous Imprisonment for seven years and to pay a fine of Rs.1000/-, in default of which to undergo further RI for three months. Since the appellant has already undergone the sentence imposed by us, the appellant be released forthwith, if not required in any other case.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)