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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.183 OF 2008**

Mahendra Narsing Jagtap	]	
age: 32 years, Occupation : Nil	]	
residing at Jalgaon Supe,	]	... <u>Appellant</u>
Taluka: Baramati,	]	Ori. Accused.
District: Pune	]	
	]	
at present in Yervada Central Prison	]	
Pune.	]	

V/s.

The State of Maharashtra	]	
at the instance of Baramati Taluka Police	]	... Respondent
Station, Baramati, Dist.Pune	]	

Mr. Abhijit P. Kulkarni with Mr. Manoj Badgujar, for Appellant.
Mrs. A. S. Pai, A.P.P., for the Respondent-State.

**CORAM : SMT. V. K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 12th JUNE, 2015.

ORAL JUDGMENT [PER : SMT. V.K. TAHILRAMANI, J.]

1. The appellant-original accused has preferred this appeal, against the judgment and order dated 28th November,

2007, passed by the learned Additional Sessions Judge, Baramati, Pune, in Sessions Case No.57 of 2006. By the said judgment and order, learned Sessions Judge convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer life imprisonment and fine of Rs.500/- in default rigorous imprisonment for one month.

2. The prosecution case briefly stated is as under :

Deceased Bhagubai was the mother of appellant and P.W.1 Vitthal. P.W.1 Vitthal was residing with his wife P.W.2 Shalan and his mother Bhagubai in village Jalgaon Supe. The appellant was residing adjacent to the house of P.W.1 Vitthal. The house of P.W.3 Manik, who was cousin of appellant and P.W.1 Vitthal, was situated at a distance of 50 feet away from the house of P.W.1 Vitthal. The appellant was married, but his wife was not staying with him as the appellant used to consume liquor and under the influence of liquor used to harass his wife and beat her.

The incident took place on 21.03.2006. P.W.1 Vitthal returned home at about 8.00 p.m. after finishing his agricultural work. He called his mother Bhagubai for taking dinner, but the appellant did not allow his mother Bhagubai to take the dinner. The appellant, then took his mother Bhagubai in front of the house of P.W.3 Manik. The appellant had taken a gunny bag and pillow for his mother to sleep. Bhagubai then slept on the gunny bag. The appellant was sitting near her head. P.W.3 Manik was sleeping at a distance of about 5 feet from Bhagubai. P.W.2 Shalan, who was cleaning utensils, heard sound of blow being given with a stone (pata) on the head. P.W.3 Shalan started shouting. Her husband P.W.1 Vitthal came there. They both saw the appellant running away and at that time, they saw that Bhagubai had received bleeding injury on her head and blood was oozing out from the injury on the head and Bhagubai had died. Though P.W.1 and P.W.2 did not witness actual assault by appellant on Bhagubai with stone (pata), P.W.3 Manik, witnessed the actual assault by the appellant on Bhagubai because he was sleeping just 5 feet away from Bhagubai. Thereafter the police

was informed. P.W.1 Vitthal lodged F.I.R. Thereafter investigation commenced. 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. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that there is agricultural dispute between him and his brother P.W.1 Vitthal, hence he has been falsely implicated in this case. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph No.1 above, hence this appeal.

4. We have heard Mr. Abhijit Kulkarni, learned counsel for the appellant and the learned APP for the State. We have carefully considered their submissions, the judgment and order 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

caused death of his mother Bhagubai by assaulting her on the head with grinding stone (pata).

5. The conviction of the appellant is mainly based on the evidence of P.W.3 Manik who is an eye witness to the incident. P.W.3 Manik is the cousin brother of appellant as well as cousin brother of the P.W.1 Vitthal. P.W.3 Manik's house was situated about 50 feet away from the house of the appellant. The appellant was residing adjacent to the house of his brother P.W.1 Vitthal. P.W.1 Vitthal was residing in his house with his mother Bhagubai and his wife P.W.2 Shalan. P.W.3 Manik has stated that the appellant used to consume liquor and used to wander in the village. The wife of the appellant was not staying with him. P.W.3 Manik has stated that on the day of incident, he took his dinner and slept on the ota of his house. The appellant and Bhagubai came there at about 9.00 p.m. and Bhagubai slept at a distance of 5 feet from him. At that time the appellant was sitting near the head of his mother Bhagubai. P.W.3 Manik heard noise, hence he got up. When he got up, he saw appellant giving second blow with pata on the head of Bhagubai. P.W.3 Manik

stated that P.W.1 Vitthal and his wife P.W.2 Shalan reached the spot. Nothing has been elicited in the cross examination of P.W.3 Manik so as to cause us to disbelieve his testimony. There is nothing on record to show that P.W.3 Manik had any inimical relations with the appellant or had any grudge against appellant due to which he could have falsely implicated the appellant. We find P.W.3 Manik's evidence to be truthful and it inspires confidence and hence we have no hesitation in relying on the same.

6. Thereafter the prosecution has relied on the evidence of P.W.2 Shalan. According to P.W.2 Shalan, she heard noise of blow of crushing stone (pata) on the head. Hence she shouted and ran to the spot. At that time she saw the appellant running away from the spot and Bhagubai was lying dead on the spot with injuries on the head. In addition P.W.1 Vitthal has also stated that at night, his wife heard sound of giving of a blow with stone (pata), hence she started shouting. Due to this P.W.1 came out of the house, at that time, he saw the appellant running away. When he reached the spot, he noticed that his mother had

received bleeding injuries on her head and she had expired. Thus the evidence of P.W.1 Vitthal and P.W.2 Shalan shows that they saw the appellant running away and they saw Bhagubai lying dead with injuries on her head caused by stone (pata)

7. Learned counsel Mr. A.P. Kulkarni, appearing for the appellant submitted that the evidence of P.W.1 Vitthal and P.W. 2 Shalan cannot be relied upon because there are serious discrepancies in their evidence. He pointed out that P.W.1 has stated that after having dinner, his wife started cleaning utensils. Thereafter his wife entered their house for keeping utensils, at that time his wife heard sound of giving of a blow of stone (pata), hence his wife P.W. 2 Shalan started shouting. Due to this P.W.1 who was inside the house came out and noticed appellant running away. Mr. Kulkarni, further pointed out that the evidence of P.W.2 Shalan shows that she was cleaning utensils near her house, at that time, she heard sound of blow of Pata on the head. Learned counsel further pointed out that the evidence of P.W.1 Vitthal shows that P.W.2 Shalan was coming inside the house with utensils whereas evidence of P.W.2 Shalan

herself shows that she was outside the house cleaning utensils. Looking to the overall evidence, we are of the opinion that though there are some minor discrepancies, too much importance cannot be given to the same. Thus, we find no merit in the submission made by the learned counsel for the appellant in relation to discrepancies in the evidence of P.W.1 Vitthal and P.W.2 Shalan.

8. Thereafter learned counsel for the appellant pointed out that the evidence of P.W.1 Vitthal shows that there was some dispute in relation to the land between the appellant and P.W.1 Vitthal. He pointed out that P.W.2 Shalan has also admitted that she was not on talking terms with the appellant. Thus, he submitted that both P.W.1 Vitthal and P.W.2 Shalan were on inimical relations with the appellant and due to this they have falsely involved the appellant. As far as this submission is concerned, it is pertinent to note that both P.W.1 and P.W.2 do not claim to be eye witnesses to the incident. If they wanted to falsely implicate the appellant, both of them would have claimed to be eye witnesses to the actual assault on Bhagubai.

The fact that they have not claimed to be eye witnesses though they were residing just a few feet away from the place of incident, in fact makes their testimony more credible.

9. The prosecution case is further corroborated by the medical evidence. P.W.5 Dr. Kokane, conducted postmortem on the dead body of Bhagubai. P.W.5 Dr. Kokane, on external examination, noticed following injuries.

1. C.L.W. 4 cms x 3 cms x 2 cms over the right temporal region, bleeding present.
2. Contusion 4 cm x 3 cm reddish in colour over the left occipital region.
3. Contused swelling 3 cm x 2 cm just behind the left ear, reddish in colour.

On opening the skull, it was noticed that there was scalp haemotoma, fracture of right temporal bone and fracture of occipital bone, intra cranial haemorrhage was present. Thorax cavity. Lungs were pale on cut section, blood stained froth was present. Stomach was empty and all organs were pale. According to Dr. Kokane, the cause of death was due to intra cranial haemorrhage due to head injury. In the opinion of Dr. Kokane, the Injury Nos 1 and 2 are sufficient to cause the death of a person. Internal injury to head is

sufficient to cause death of the person immediately. Dr. Kokane has further stated that the injuries mentioned in the postmortem report are possible because of the pata stone Article No.1., and age of the injuries was within 24 to 36 hours.

10. Learned counsel for the appellant sought to rely on the cross examination of P.W.5 Dr. Kokane to support his contention that grinding stone fell on the head of Bhagubai from height of 10 to 12 feet which led to her death. He drew our attention to the admission of P.W.5 Dr. Kokane, who has stated that injury Nos 2 and 3 are possible because of fall of stone on the head of person from a height of 10 to 12 feet. However, it may be noted that this admission is only in relation to injury Nos 2 and 3. But deceased Bhagubai had sustained one more injury which was C.L.W 4 cm x 3 cm x 2 cm over the right temporal region which injury was bleeding. According to P.W. 5 Dr. Kokane, this injury and injury No.2 mentioned above were sufficient to cause death. Not only the evidence of P.W.5 Dr.Kokane shows that injuries sustained by Bhagubai are possible because of stone (pata) Article No.1, but his evidence also shows that stomach of Bhagubai was empty. This is consistent with the evidence of P.W.1 Vitthal, who has stated that when he called his

mother Bhagubai for taking dinner, the appellant did not allow his mother to take food. The appellant took his mother in front of house of P. W.3 Manik and made her to sleep on a gunny bag. This medical evidence that stomach of Bhagubai was empty corroborates the case of prosecution. One more aspect which corroborates the prosecution case is that postmortem was conducted by P.W.5 Dr. Kokane on 22.3.2006 between 9.30 a.m. to 10.00 a.m. and Dr. Kokane has stated the age of injury was within 24 to 36 hours. This is also totally consistent with the prosecution case that the incident had occurred on 21.3.2006 between 9.30 p.m. to 10.00 p.m.

11. Thus, on going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the appellant committed murder of Bhagubai by giving blow of grinding stone (pata) on the head. Thus, we find no merit in the appeal and the same is dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K.TAHILRAMANI, J.]