

JPP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION**

CRIMINAL APPEAL NO. 372 OF 2012

Babu Hanumanta alias Narsayya Madrasi

Age : 27 years,

R/o. Shiv Shankar Nagar, Patharli,

Dombivali (East), Thane.

(Presently lodged in Kolhapur,

Kalamba Jail).

... Appellant.

V/s.

The State of Maharashtra.

... Respondent.

Mr. Satyavrat Joshi a/w. Mr. Amol Joshi for the Appellant.

Ms. U.V. Kejriwal, APP for the State.

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

FEBRUARY 03, 2015.

ORAL JUDGMENT (PER P.V. HARDAS, J.) :-

The Appellant who stands convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life by the Additional Sessions Judge, Kalyan by Judgment dated 3.3.2012 in Sessions Case No.172 of 2009, by this Appeal questions the correctness of his conviction and sentence.

2. Facts, as are necessary for the decision of this Appeal may briefly be stated thus.

PW-7 API Jaisingh Dhanawade, who was attached to the Dombivali Police Station and was on duty on 11.4.2009, recorded the report of PW-2 Babu at Exhibit 16. On the basis of the report of PW-2 Babu, he registered an offence vide Crime No.111 of 2009 under Section 302 of the Indian Penal Code. After registration of the offence, he proceeded to the Shastrinagar Hospital, Dombivali and noticed the dead body of deceased Raju. An inquest panchnama was drawn in the presence of the panch witnesses at Exhibit 11. The dead body was then referred for postmortem examination. Appellant Babu was brought to the Police Station by the Police Staff of the Detection Branch on 12.4.2009. The Appellant was arrested and his blood stained clothes were seized under panchnama, in the presence of panchas, at Exhibit 33. Similarly, blood stained clothes of PW-2 Babu were also seized under panchnama at Exhibit 26. Further investigation was handed over to PW-8 PI Pardeshi.

PW-8 PI Pardeshi, who was also attached to the Dombivali Police Station, was entrusted with the investigation of Crime No.111 of 2009. He accordingly visited the scene of the incident and in the presence of the panchas, drew the scene of the incident panchnama at Exhibit 31. The sample of the blood stains from the scene of the incident was obtained and was seized under the said panchnama. Statement of PW-3 Sheela and PW-4 Popatlal were recorded. The Appellant was referred to the Medical Officer for drawing the blood sample. On the basis of the disclosure memorandum of the Appellant, a knife described as a butcher's knife was seized under seizure memorandum at Exhibit 29. The seized property was then referred to the Chemical Analyzer under requisition at Exhibit 35. Further to the completion of investigation, a charge-sheet against the Appellant was submitted.

3. Postmortem on the dead body of deceased Raju was performed by PW-1 Dr. Sanjay Sali, who noticed the following external injuries :-

1. Incised wound on forehead near hair line 8 x

2 cm x 2 cm.

2. Incised wound parietal region 4 cm x 2 cm x 2 cm.
3. Incised wound parietal region 3 cm x 2 cm x 2 cm.
4. Incised wound going from right ear towards neck 10 cm x 1 cm x 1 cm.
5. Incised wound on chest 2 cm below neck 2 cm x 1 cm x 1 cm.
6. Incised wound left cheek 2 cm x 1 cm x 1 cm.
7. Incised wound left side of chest 7 cm. below nipple 6 cm x 2 cm x 2 cm.
8. Incised wound upper part of abdomen left side 5 cm x 2 x 2 cm. with protrusion of bowel.
9. Incised wound left forearm 8 cm x 2cm x 2 cm.
10. Incised wound left arm 10 cm x 2 cm x 2 cm.
11. Incised wound left wrist 3 cm x 2 cm x 2 cm.

12. Incised wound left wrist 3 inch above wrist joint 6 cm x 2 cm x bone deep.
13. Incised wound left wrist joint 6 cm x 4 cm x 4 cm with exposure of tendon and bone.
14. Incised wound left little finger phalanx 3 cm x 2 cm x bone deep.
15. Incised wound left fore finger distant phalanx 2 cm x 1 cm x 1 cm.
16. Incised wound left thumb 4 cm x 2 cm x 2 cm.
17. Incised wound right elbow 5 cm x 2 cm x 1 cm.
18. Incised wound right wrist dorsal aspect 6 cm x 2 cm x 2 cm.
19. Incised wound right forearm dorsal aspect 3 cm x 1 cm.
20. Incised wound right little finger 3 cm x 1 cm x 1 cm.
21. Incised wound on back on left side 9 cm x 2 cm x 2 cm.
22. Abrasion right knee 4 cm x ½ cm.

23. Abrasion left knee 6 cm x ½ cm.

He also noticed the following fractures :-

1. Fracture frontal bone of skull
2. Fracture left upper part of radius and ulna.
3. Fracture left lower part of radius.
4. Fracture 3rd left rib.

He opined that all the injuries were antemortem and on internal examination he noticed haematoma to the parietal region of skull, fracture of frontal bone of skull and injury to the left lobe of the lung. He has therefore opined that deceased Raju had died due to shock due to multiple injuries due to sharp object. The Postmortem report is at Exhibit 14.

4. On the case being committed to the Court of Sessions, Trial Court vide Exhibit 5 framed charge against the Appellant for offence punishable under Section 302 of the Indian Penal Code. The Appellant denied his guilt and claimed

to be tried. Prosecution in support of its case examined 8 witnesses. The defence of the Appellant was of denial. The Trial Judge accepting the prosecution case convicted and sentenced the Appellant as aforestated.

5. We have heard Mr. Satyavrat Joshi, 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 refer to the evidence of the prosecution witnesses.

6. Prosecution has examined PW-2 Babu, brother of deceased Raju. PW-2 Babu deposes that one Ganesh had informed him that Raju had been killed by the Appellant. According to him, he had gone to the shop of PW-4 Popatlal and had seen the dead body of his brother Raju. He had lodged his report at Exhibit 16 and thereafter, had taken Raju to the hospital. PW-2 Babu also deposes about some quarrel between the Appellant and brother of the deceased.

7. Prosecution has examined PW-3 Sheela and PW-4

Popatlal as eye witnesses to the incident. PW-3 Sheela deposes that she alongwith her husband PW-4 Popatlal manages a Kirana Shop in the name "Popat Kirana Stores". According to her, on 11.4.2009, at about 8.30 to 9.00 p.m. while she and her husband Potatlal, were present in the shop, deceased Raju came running to the shop crying out for help. Raju was followed by the Appellant, who was brandishing a butcher's knife. The Appellant then assaulted Raju by the knife. Raju was crying out for help and PW-4 Popatlal told the Appellant not to assault Raju. The Appellant however glared angrily at Popatlal. According to Sheela, the Appellant had stabbed Babu and had inflicted 20 to 25 injuries by the knife. After inflicting the injuries, the Appellant left the shop. PW-2 Babu, brother of deceased Raju, took deceased to the hospital in a tempo.

8. In cross-examination she has admitted that she had seen the knife with which the Appellant had assaulted deceased Raju. She has also admitted that some persons had gathered in the shop. According to her, the incident had lasted for about 10 minutes. In further cross-examination an admission is elicited that PW-2 Babu had come in the lane

armed with a knife but thereafter had fled. An admission is also elicited in further cross-examination that before her deposition in the Court, the Appellant was pointed out by the Police and Sheela was asked to identify him in the Court.

9. Prosecution has examined PW-4 Popatlal, husband of PW-3 Sheela, who deposes of similar lines as that of Sheela. In cross-examination he has admitted that some customers were present in the shop and had also witnessed the incident. He has admitted that electric supply was not available during the incident. He has admitted that his statement was recorded on the next day. He has also admitted that he learnt the name of the Appellant from some persons after the incident. He has denied the suggestion that at the behest of Police, he had identified the Appellant.

10. On the basis of the evidence of the two eye witnesses, Mr. Joshi, learned Counsel for the Appellant has urged before us that it is extremely unlikely that the prosecution witnesses had opportunity of observing the assailant as the electric supply was not available. It is also

urged before us that PW-3 Sheela has admitted that she had identified the Appellant in the Court at the behest of the Police. It is also urged before us that PW-4 Popatlal was not knowing the name of the Appellant and consequently, false or deliberate implication of the Appellant could not be ruled out. The learned APP has supported the findings arrived at by the Trial Court.

11. Undisputedly, the Appellant and the prosecution witnesses were residents of the same village. Even if it is assumed that PW-3 Sheela and PW-4 Popatlal were not knowing the name of the Appellant, the identification of the Appellant as the assailant cannot be faulted on that score. Since the customers were present in the shop and business was being transacted, there cannot be any question of insufficiency of illumination in the shop. We even find that there are no grounds whatsoever for discarding the evidence of PW-4 Popatlal. Even if the evidence of PW-3 Sheela is not taken into consideration, in our opinion, the evidence of PW-4 Popatlal establishes the offence against the Appellant beyond reasonable doubt. Though PW-4 Popatlal has admitted that a

statement was recorded on the next day, the cross-examination of the Investigating Officer discloses that the statement of the eye witness was recorded on the same day.

12. In respect of the evidence relating to the discovery of the knife as well as the finding of the Chemical Analyzer of blood of 'O' group on the clothes of the Appellant, in our opinion, no reliance can be placed on the report of the Chemical Analyzer. There is no satisfactory evidence that the articles i.e. the knife and the clothes were properly sealed after their seizure and remained in that condition till they were examined by the Chemical Analyzer. In the absence of such evidence, in our opinion, no reliance can be placed on the report of the Chemical Analyzer. Even if the report of the Chemical Analyzer is left out of consideration, there is overwhelming evidence of PW-4 Popatlal which proves the offence against the Appellant beyond reasonable doubt. Non examination of other eye witnesses would not render the evidence of PW-4 Popatlal fragile nor would it be a ground for discarding the evidence of PW-4 Popatlal.

13. Thus, in our opinion, the prosecution has proved the offence against the Appellant beyond reasonable doubt and no interference in the present Appeal is called for.

14. Accordingly, Criminal Appeal No.372 of 2012 is dismissed confirming the conviction and sentence of the Appellant.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (P.V. HARDAS, J.)