

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.529 OF 2006

1. Chandrakant Balkrishna Gadankush,	]	
Age : about 28 Yrs., Occu.: Education,	]	
	]	
2. Ajit Balkrishna Gadankush,	]	
Age : about 31 Yrs., Occu.: Education,	]	
	]	 Appellants /
Both R/o. Chinchanare Nimb,	]	(Original Accused
Taluka & District : Satara	]	Nos.1 and 2)

Versus

The State of Maharashtra,		
Thru' Satara Taluka Police Station, Satara	]	 Respondent

Dr. Yug Mohit Chaudhary for the Appellants.

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

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

DATE : 30TH MARCH, 2015.

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

1. The Appellants, who stand convicted by the IIIrd Ad-Hoc Additional Sessions Judge, Satara, by Judgment dated 27th April, 2006, in Sessions Case No.72 of 2002 for the offences punishable under Section 302 and 504 r/w. 34 of the IPC and sentenced to suffer imprisonment for life and to

pay fine of Rs.2,000/- each, in default to suffer further imprisonment for a period of two months for the offence punishable under Section 302 r/w. 34 of the IPC and further sentenced to suffer S.I. for six months and to pay fine of Rs.200/- each, in default to suffer S.I. for one month for the offence punishable under Section 504 r/w. 34 of the IPC, by this Appeal, challenge their conviction and sentence.

2. Facts, as are necessary, for deciding this Appeal can briefly be stated thus :-

The house of PW-1 Ranibai and the house of the Appellants is just adjoining to each other. Since last about 25 years, there was enmity between them. Frequent quarrels used to take place between two families on one count or the other. On 3rd March, 2002, at about 11 am, PW-1 Ranibai's husband Hanmant returned from the field and after taking the meal, came out of the house in order to proceed to the village. When PW-1 Ranibai asked him for what purpose he was going to the village, he got annoyed and started abusing her. The Appellants, under misconception that Hanmant was giving abuses to them, came out of the house. Appellant No.1-Chandrakant was carrying axe in his hand, whereas, Appellant No.2-Ajit was carrying stick in his hand. Both of them assaulted deceased Hanmant with the weapons in their hands. When PW-1 Ranibai

started shouting loudly, her brother-in-law Shrirang and nephew Santosh came on the spot. She disclosed them about the incident. By that time, both the Appellants ran away from the spot. Hanmant succumbed to the injuries on the spot. Then PW-1 Ranibai went to Satara Police Station along with her nephew Santosh and gave oral report of the incident to PW-9 PI Shankar Patil, who was present there. He reduced the report (Exhibit-50) in writing and registered C.R. No.30 of 2002 on the said report.

3. PW-9 PI Patil then took over further investigation of the case. He visited the spot along with two Panchas and in the presence of PW-3 Panch Balu More, he drew the Scene of Offence Panchanama (Exhibit-54). From the spot, he seized one slipper of paragon company, one stick and handkerchief. At the spot, he also prepared Inquest Panchanama (Exhibit-41) and sent the dead body for postmortem examination. PW-6 Dr. Ujwala Naik, attached to Civil Hospital, Satara, performed the postmortem examination on the dead body and issued Postmortem Report (Exhibit-61).

4. On the same day, PW-9 PI Patil recorded the statements of 5 witnesses and on the next day, he recorded statements of 9 witnesses.

5. Meanwhile, on the day of incident itself, Appellants, on their own,

came to the Police Station and surrendered themselves before PW-8 Police Head Constable Balasaheb Sarde. At that time, Appellant No.1 was carrying axe in his hand, which was seized, along with blood stained clothes of both the Appellants, under Panchanama (Exhibit-63) in the presence of PW-7 Panch Narayan Kanse. These blood stained clothes of the Appellants, weapons of assault and other articles seized from the spot were sent by PW-9 PI Patil to Chemical Analyzer on 26th March, 2002 with his letter (Exhibit-58). C.A. Reports are produced at Exhibits “73” and “74”. Further to completion of investigation, PW-9 PI Patil filed Charge-Sheet in the Court against the Appellants.

6. On case being committed to the Sessions Court, the Trial Court framed charge against the Appellants vide Exhibit-10. Both the Appellants pleaded not guilty and claimed trial.

7. In support of its case, Prosecution examined 9 witnesses and on appreciation of their evidence, the Trial Court convicted and sentenced the Appellants, as aforesaid.

8. In this Appeal, we have heard learned Counsel for the Appellants and learned A.P.P. for the Respondent-State. In our considered opinion, before adverting to the rival submissions made by them, it would be useful to refer to the evidence on record.

9. To prove the homicidal death of deceased Hanmant, Prosecution has relied on the evidence of PW-6 Dr. Ujwala Naik, who has conducted postmortem examination. According to her, on external examination, she found following injuries, which she has mentioned in column No.17 of her report.

- (1) *C.L.W. over right side of forehead 4 cm above right eyebrow, transverse 2.5 cm x 1 cm x 0.5 cm.*
- (2) *Incised wound in right supraclavicular region immediately above clavicle 7 cm x 2.0 cm x 3 cm with sharp margins.*
- (3) *Incised wound on right side mid neck region transverse 9.5 cm x 4.5 cm x 5 cm sharp margins with cutting stern ockidomastoid muscle transversely with common carotid astery and internal jugular vein are cut.*
- (4) *Incised wound in left supra-scapular region 5 cm x 1 cm x 0.5 cm in size, transverse with sharp margins.*
- (5) *Incised wound in left scapular region with sharp margins 8 cm x 2 cm x 3 cm in size transverse.*
- (6) *Compound fracture right radius and ulna proximal 1/3rd with C.L.W. 2.5 cm x 2 cm x 0.5 cm.*

10. It is deposed by her that Injury Nos.2 to 5 may be caused by the axe, whereas, remaining injuries are possible by wooden log. According to her, the cause of death was “*haemorrhagic shock due to multiple incised wounds*”. The Postmortem Report issued by her is at Exhibit-61.

11. In her cross-examination, it is brought on record that as per the findings noted in the Postmortem Report at the time of autopsy, stomach and bladder of the deceased were totally empty. This finding is material, as the entire defence of the Appellants rests on this finding, which we will be considering in due course.

12. To prove the complicity of Appellants in the incident, the main reliance of the Prosecution is on the evidence of PW-1 Ranibai and PW-2 Shakuntala Bhosale, the sister of the deceased. As per Prosecution case, both of them are eye witnesses to the incident. It is deposed by PW-1 Ranibai that on the date of incident, her husband returned from the field at about 11 am. She served meal to him and then he left the house for going to the village. When she confronted him as to why he was going to the village, he started giving abuses to her. At that time, Appellant No.2 was coming from the village. He heard those abuses and under misconception that the abuses were hurled at him, he came along with Appellant No.2, being armed with the weapons. Appellant No.1 assaulted deceased Hanmant with axe on his neck, shoulder, forehead and back, whereas, Appellant No.2 assaulted him with stick. Both the Appellants were shouting that they will finish the deceased. When PW-1 Ranibai shouted, her brother-in-law Shrirang and his son Santosh came to the spot. Seeing them, both the Appellants ran away. Appellant No.1 carried axe with him,

whereas, Appellant No.2 left stick on the spot. Her husband succumbed to the injuries on the spot and then she went to the Police Station and lodged the report.

13. PW-2 Shakuntala is the sister of the deceased, who is resident of Village Limb. On the day of incident, she had come to attend the marriage settlement programme of her brother Shrirang's son. According to her, when she reached near the house, she heard the shouting of woman. Hence she went near and found that Appellants assaulting deceased Hanmant with weapons in their hands. PW-1 Ranibai was present there.

14. The evidence of these two eye witnesses is challenged by the learned Counsel for the Appellants and, in our considered opinion, rightly so, as the admissions given by them in their cross-examination totally shatters their presence at the spot and, hence, their credibility. The evidence of PW-1 Ranibai also contradicts the medical evidence on record creating serious doubt as to the timing of the death of deceased also. As aforesaid, PW-1 Ranibai has, not only in the complaint (Exhibit-50) but in evidence before the Court also, stated that deceased Hanmant returned from the field at about 11 am for taking meal and she served him the meal. After taking the meal, he started proceeding to the village at about 11:45 am, at which time incident took place. In her cross-

examination, she has further deposed that she has served Hanmant bread (Jawar Bhakari) and dry fish, which she has prepared for him. She served it to him and came out of the house while he was taking meal. Thus, her evidence is categorical to the effect that deceased had taken the meal in between 11 am to 11:45 am and at about 11:45 am, the incident had occurred. The medical evidence, however, gives a categorical finding that, both, stomach and bladder of the deceased were empty. There were absolutely no contents of food found therein. In view thereof, evidence of eye witnesses in this case being totally inconsistent with medical evidence, it creates doubt as to the exact time of the incident.

15. In this respect, learned Counsel for the Appellants has relied upon ***State of Uttar Pradesh Vs. Ashok Kumar & Anr., (1979) 3 SCC 1***, wherein faced with similar fact situation, like, Doctor finding the stomach to be empty, whereas, the evidence of the witnesses was to the effect that deceased had taken the meal just before the incident, the Apex Court held that the evidence of the witnesses is falsified by the medical evidence.

16. Similarly, in the case of ***Bhimappa Jinnappa Naganur Vs. State of Karnataka, AIR 1993 SC 1469***, relied upon by the learned Counsel for the Appellants, it was held that, if the evidence of the eye witness is taken

for its face value that the deceased died within a couple of minutes after finishing his mid-day meal, then the Postmortem Report as well as the statement of the Medical Officer proving that the stomach was empty, being inconsistent, the benefit of doubt will go to the Accused.

17. Learned Counsel for the Appellants has also relied upon ***Moti and Ors. Vs. State of U.P., (2003) 9 SCC 444***, wherein the Apex Court was pleased to observe that, though the contents of the stomach may not always be an indicator of the time of death, but, where the stomach of the deceased was found empty and the Prosecution evidence was that the murder had taken place shortly after the deceased had his last meal, contents of the stomach would have a material bearing on the determination of the time of death. It was further held that the time of death being a material factor to verify the presence of the eye witnesses, it was obligatory on the part of Prosecution to have clarified the discrepancy between medical evidence and the oral evidence. The Prosecution having failed to do so, it was held by the Supreme Court that, there is a serious doubt as to the time of incident and the presence of eye witnesses at the time of incident and their narration of the incident also becomes doubtful.

18. In the present case also, the material discrepancy between the oral

evidence of PW-1 Ranibai and the medical evidence affects the credibility of the evidence of PW-1 Ranibai and PW-2 Shakuntala. It also raises a serious doubt in our minds as to whether these eye witnesses were really present at the time of incident and witnessed the incident. On this very ground itself, in our considered opinion, the Appellants deserve to be given the benefit of doubt.

19. Moreover, as regards the evidence of PW-2 Shakuntala, her very presence at the time of incident is doubtful. She is not the normal resident of that village. Her statement is recorded 5 days after the incident i.e. on 8th March, 2002, though, according to her, she was staying very much in the house of her brother, near the spot of incident. She has admitted that though Police made inquiry with her on the second day of the incident, she had not stated anything regarding the incident to the Police for 4 to 5 days. Moreover, her presence at the time of incident is not spoken of by PW-1 Ranibai. Her evidence being conspicuously silent on this aspect, viewed in the light of the fact that the recording of her statement is delayed and no explanation is offered for the same, in our considered opinion, no reliance can be placed on her testimony.

20. Though the Prosecution has also relied on the evidence of witness PW-8 PHC Sarde that both the Appellants appeared before him after the

incident and he seized their blood stained clothes and the axe under Panchanama (Exhibit-63), Panch Witness PW-7 Narayan Kanse has not supported the Prosecution case. He is declared hostile. In addition to that, PW-8 PHC Sarde has admitted in his cross-examination that he has not affixed wax seal to the attached articles. In such situation, the cloud of suspicion hovers over the Prosecution case. In order to rule out even the remote possibility of the seized articles being tampered with during the course of investigation, the Prosecution has to prove that the seized articles were immediately sealed with wax and were in the same condition in which they were received by the Chemical Analyzer. In the present case, sans the evidence on record proving that the blood stained clothes of the Appellants and the axe were sealed with wax, the possibility of tampering being not ruled out, the said recovery evidence also cannot be relied upon.

21. To sum up, therefore, it has to be held that in the absence of any incriminating evidence on record proved against the Appellants, the Judgment of the Trial Court convicting and sentencing the Appellants cannot be sustained. It has to be quashed and set aside.

22. Consequently, Criminal Appeal is allowed and the conviction and sentence of the Appellants is hereby quashed and set aside and they are

acquitted of the offences with which they were charged and convicted. Fine, if paid by the Appellants, be refunded to them. Since the Appellant No.1/Original Accused No.1-Chandrakant Balkrishna Gadankush is in Jail, he be released forthwith, if not required in any other case. Bail Bonds of Appellant No.2/Original Accused No.2-Ajit Balkrishna Gadankush stands cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]