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

CRIMINAL APPEAL NO.772 OF 2007

1. Appasaheb @ Dhanappa Girappa	]	
Chadchan,	]	
age: 28 years, occn. Service	]	... Appellants
	]	(Orig. accused)
2. Girappa Dhanappa Chadchan, (abated)	]	
age: 55 years, Occn. Agriculturist	]	
Both residing at post Jadra Bobalad	]	
Taluka: Jath, District: Sangli.	]	
	]	
(Appellant No.1 at present lodged in	]	
District Prison, Sangli.	]	

V/s.

The State of Maharashtra	]	
Through Umadi Police Station	]	 Respondent
District: Sangli	]	

Dr. Yug Mohit Chaudhary, for Appellant No.1.
Mr. Vinod Sangvikar, i/by Mr. Umesh Mankapure, for
original complainant.
Smt. V.R. Bhosale, A.P.P., for the Respondent-State.

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

DATE : 30Th APRIL, 2015.

ORAL JUDGMENT(Per : Dr. Shalini Phansalkar-Joshi, J.)

1. The appellants, who stand convicted for the offence punishable under Section 302 read with 34 of the Indian Penal Code

and sentenced to suffer life imprisonment and to pay fine of Rs.5,000/- each in default to suffer rigorous imprisonment for two years, by the Sessions Judge, Sangli, by judgment dated 2nd July, 2007, in Session Case No.220 of 2005, by this appeal challenge their conviction and sentence.

2. The facts, as are necessary for deciding this appeal, may be stated, in brief as under :-

On 15.5.2005, at about 7.30 a.m. while P.W.2 Mallayya Mathpati was returning from morning walk, he saw that the present appellants/accused Nos 1 and 2 were waiting in a lane. While his son-in-law deceased Irayya was proceeding on his motorcycle from the same lane, the appellants obstructed the deceased. Appellant No.2 Girappa caught hold of the deceased and the appellant No.1 Appasaheb @ Dhanappa assaulted the deceased with several blows of scythe. P.W.2 Mallayya, then immediately went to the house of his daughter Surekha and informed her about the incident and rushed to Umadi police station and lodged report of the incident vide Exh.14. P.W.9 Head Constable Patil, who was present at the police station, recorded his complaint Exh.14 and on the said complaint registered C.R.No.24 of 2005 against the appellants, for the offence punishable under Section 302, 341 read with 34 of the Indian Penal Code.

Investigation of the crime was then handed over to P.W.10 Police Inspector Khade.

3. On being entrusted with the investigation of the said crime, P.W.10 PI Khade, went to the spot alongwith P.W. 2 Mallayya. At the spot, the dead body of Irayya was still lying. He conducted inquest panchanama Exh.16 thereon in presence of the panch P.W.3 Maklappa Hunnur and then sent the dead body to Madgyal Primary Health Centre for postmortem. Thereafter in the presence of panchas, he has drawn the scene of offence panchanama Exh.18. From the spot, he seized the blood stained mud and simple mud, broken mirror of motorcycle, one piece of paper stained with blood and the footwear. As two motorcycles of the deceased and appellant No.2 were lying on the spot, he has seized those motorcycles also. On the same day, he has recorded the statements of 6 to 7 witnesses and has taken the search of the appellant Nos.1 and 2.

4. On 16.5.2005, police constable Patel produced clothes of the deceased, which P.W.10 PI Khade seized under panchanma Exh.27. On 17.5.2005, PI Khade, succeeded in arresting the appellant Nos 1 and 2 at about 5.40 p.m. under panchanama. During police custody, on 21.5.2005 the appellant No.1 expressed his willingness to produce the weapon of assault scythe and the clothes which he was

wearing at the time of incident. His statement was reduced to memorandum panchnama Exh.20, in presence of panch P.W.5 Wahab Mulla. Thereafter the appellant No.1 guided the police and panchas to the cattle shed adjacent to his house and produced the scythe Article No.14, his T-shirt Article No.15 and pointed out Article 16 his pant with blood stains thereon. All these three Articles were seized under the same panchanama Exh.28.

5. During interrogation, at the instance of appellant No.2, his blood stained clothes also came to be seized under panchanama Exh.22, on 19.5.2005. On the same day, PI Khade has recorded the statements P.W.7 Vijaykumar Hunnur, an eye witness to the incident and one Kisappa Kittad. On 30.5.2005, PI Khade has sent all the seized articles to Chemical Analyzer by his requisition Exh.33. The CA report is produced in the case at Exh.72; whereas the postmortem notes are produced at exh.29. Further to completion of investigation, API Khade filed chargesheet in the Court against the appellants on 8.8.2005.

6. On the case being committed to the Sessions Court, the trial Court framed charge against the appellants vide exh.2. Both the appellants pleaded not guilty and claimed trial.

7. In support of its case, the prosecution examined 10

witnesses whereas the appellants examined one witness and on appreciation of their evidence, the trial Court held the guilt of the appellants to be proved beyond reasonable doubt and convicted and sentenced them as aforesaid.

8. During the pendency of this appeal, appellant No.2.Girappa Chadchan has expired on 30.9.2009, hence the appeal against him stands dismissed as abated. Therefore, this appeal is proceeded against appellant No.1 alone.

9. The impugned judgment of the trial Court is challenged in this appeal by the learned counsel for the appellant No.1 Dr. Yug Mohit Chaudhary, and supported by learned APP for the State Smt. V. R. Bhosale with the assistance of Mr. Vinod Sangvikar, learned counsel for the original complainant. In order to effectively deal with the rival submissions advanced by them, in our considered opinion, it would be useful to refer to the evidence on record.

10. To prove the homicidal death of deceased Irayya, prosecution has relied upon the evidence of P. W.8 Dr. Pawar, who was at the relevant time, attached to Madgyal Primary health Centre and has conducted postmortem examination on the dead body of Irayya on the same day at about 12.30 noon. On his examination, he found following

external injuries.

- 1) Incised (cutting) injury to right cheek, spindle shape of 4" x 1" x ½ " with clotted blood. Skin edge everted.
- 2) Incised (cutting) injury to right cheek, oblique above and near to injury No.1, 2" x 1" x ½ " clotted blood, spindle shape, edges everted.
- 3) Incised (cutting) injury to right cheek oblique above and near to injury No.2, 5" x 1" x ½ " clotted blood, spindle shape, edges everted.
- 4) Incised (cutting) injury to from right frontal to right ear 10"x 4" x 1" x 2", with clotted blood and compound and opened fracture of Right/Parietal /temporal bone with brain matter coming through it.
- 5) Incised (cutting) injury on right dorsum of right hand 3" x 1" x 1", with clotted blood with fracture of third metacarpal vertically/edges everted.
- 6) Incised (cutting) injury to above right wrist joint obliquely 4" x 1" x 1", with clotted blood with fracture of lower 1/3rd of Ulna bone.
- 7) Incised (cutting) injury to right elbow joint on lateral aspect 3" x ½ " x ½ ", clotted blood, edges everted.
- 8) Incised (cutting) injury right shoulder joint anterior aspect 1"

x ½ " x ½ ", clotted blood, edged everted.

fracture of right maxillary bone.

fracture of right frontal/parietal/temporal bone

fracture of right 3rd meta carpal bone.

On internal examination, P.W.8 Dr. Pawar , found following internal injuries :-

Compound and opened fracture of right frontal and parietal temporal bone obliquely.

laceration of brain on the right side with brain matter coming through; fracture of right frontal parietal/temporal bone with clotted blood, all brain vessels were torn, with accumulation of clotted blood.

11. In his opinion the cause of death was acute cardiorespiratory failure due to vasovagal haemorrhage shock because of multiple incised injury over the scalp and body with fracture of skull and laceration of brain.

12. Accordingly he has issued postmortem report exh.29. In the evidence before the Court, he has deposed that the injuries found on the body of deceased are possible with the assault by Article 14 scythe. There is hardly any cross examination of this witness. Even otherwise, learned counsel for the appellants has not at all disputed the factum of homicidal death of the deceased.

13. To prove the complicity of appellants, in the homicidal death of deceased Irayya, the prosecution has relied upon the evidence of two eye witnesses to the incident, viz P.W.2 Mallayya and P.W.7 Vijaykumar Hunnur. P.W.2 Mallayya is the father-in-law of the deceased. As per his evidence, his daughter Surekha was married with the deceased Irayya in the year 1983. In the year 2004, as he had heart operation, he started residing in the house of his daughter Surekha, who used to take his care after the operation.

14. As per his evidence, deceased Irayya has purchased one house from Shankarayya Math in the year 1994. On the rear side of the said house, there was house of appellant No.2 Girappa. There was dispute between two appellants and the deceased in respect of common wall between the two houses. The deceased had also filed civil suit against the appellant No.2. Girappa and the said suit was decided in favour of the deceased, just one month prior to the incident. Some 15 days after the decision of the said suit, appellant No.1 had come to the house of deceased at about 6.00 p.m. with an axe in his hand and had threatened the deceased that, “ultimately result of the dispute was in his hands, whatever may be the decision of the Court”.

15. In this backdrop, as per evidence of P.W.2 Mallayya, the

incident took place on 15.5.2005 at about 7.30 a.m. in front of Hanuman Mandir near the house of Ishwarappa Ravi. On that day, as usual, he had gone for morning walk at about 6.30 a.m. and after taking morning walk at about 7.30 was returning to the house. On the way in front of Hanuman temple, he saw appellant No.1 Dhanappa having bicycle in his hand whereas deceased Irayya was heading towards opposite direction on his motorcycle. At that time appellant No.1 put his bicycle in front of the motorcycle to stop the deceased. For avoiding dash, deceased turned his motorcycle and went towards lane of Ishwarappa Ravi. At that point of time, appellant No.2 held motorcycle of the deceased from rear side and started dragging it. Immediately thereafter appellant No.1 removed scythe and started assaulting deceased with that scythe. Initially deceased Irayya attempted to avoid blows by waiving his hand. Hence he received injuries on his right hand and palm. He received four blows of scythe on the hand and back, therefore, he fell down from the motorcycle. Thereafter also appellant No.1 gave four more blows on the head and on the other parts of the body of the deceased. Deceased was raising shouts for help whereas P.W.2 Mallayya also shouted for help to catch the appellants. However, appellant No.1 ran away from the spot on his bicycle and appellant No.2 also ran away from the spot.

16. P.W.2 Mallayya, then went to the house of his daughter,

which was at a distance of two minutes walk. He narrated the incident to his daughter Surekha and proceeded to Umadi police station which was at a distance of 17 to 18 kms. There his complaint exh.14 came to be recorded by P.W.9 Head Constable Patil. Then alongwith P.W.10 PI Khade, he returned to the spot. Till then the dead body of the deceased Irayya was lying on the spot. Thereafter the police sent the dead body to postmortem.

17. This witness is cross examined at length by learned counsel for appellants, but absolutely nothing worthwhile is elicited in his cross examination to disbelieve him in any way. In his cross examination, it is further brought on record that as his telephone was dead at the relevant time, he could not contact the police on phone, hence he went to Umadi police station in a jeep, which he boarded near S.T. stand. In the jeep he was crying. When the other persons in the jeep made enquiry with him, he informed about the incident to them. He has further deposed that at about 8.45 a.m. he reached Umadi police station and immediately his complaint came to be recorded and registered.

18. Complaint Exh.14 and the evidence of P.W.9 Head Constable Patil gives complete corroboration to the evidence of P.W.2 Mallayya. According to evidence of P.W.9 Head Constable Patil also, at about 8.45 a.m. P.W.2 Mallayya came to the police station and lodged

complaint Exh.14. After registering offence, he has handed over the said complaint to P.W.10 PI Khade for investigation. In the cross examination of P.W.10 PI Khade also, these facts are proved on record. This prompt lodging of F.I.R. giving all details of the incident fortifies the evidence of P.W.2 Mallayya and further proves not only his presence at the spot but the fact that he has witnessed the entire incident as it has happened. In his cross examination also it is brought on record that after the incident he went to the house and narrated the incident to his daughter. It is further brought on record that instead of accompanying his daughter upto the spot of incident, in given situation, he thought it proper to first go to police station, to lodge the complaint. It is also brought on record that as his daughter was accompanied with father of deceased Irayya, for going to the spot of incident, he gave preference in going to the police station to lodge complaint, instead of accompanying his daughter.

19. The only ground on which his evidence is challenged is that instead of himself going to police station, he could have made a phone call to the police station and accompanied his daughter. However, this witness has given explanation for the same by deposing that at the relevant time, his telephone was dead and as regards the daughter, as her father-in-law was with her, he came to the police station.

20. Though defence has examined one witness by name Basavraj Geggi, an employee of BSNL, who deposed that there was no such complaint of P.W.2 Mallayya about their telephone being dead at the relevant time, in our considered opinion, it does not make much difference because evidence of P.W.2 Mallayya that he has gone to the police station to lodge complaint has remained unchallenged on record and it is also supported with the evidence of P.W.9 Head Constable Patil and P.W.10 PI Khade.

21. The next submission advanced by learned counsel for appellants is that there is some overwriting in the inquest panchanama; initially it was written as 9.15 a.m. and subsequently it is corrected as 10.15 a.m. According to him, when the complaint itself was registered at 9.15 a.m, there is no question of inquest panchanama being made at the relevant time. In our considered opinion, this is too insignificant, a fact to give much importance, especially when the evidence of eye witness is standing like the rock, thoroughly inconsistent, cogent and more than sufficient to inspire confidence in the judicial mind. Despite searching cross-examination, the defence has not succeeded in making any dent in his testimony, to disbelieve him. Therefore, in our considered opinion, his sole testimony by itself is sufficient to prove the guilt of appellant No.1. Furthermore it is also supported with the postmortem report Exh.29 which reveals that as many as 8 incised wounds were

found on the dead body caused by sharp edged weapon, which ultimately resulted into death of deceased. There is also evidence of recovery of blood stained scythe, at the instance of present appellant No.1 proved through the evidence of P.W.5 panch Wahab Mulla and P.W.10 PI Khade. The said scythe was sent to C.A. and as per C.A. report Exh.72, the blood stains found thereon were of the blood group "A", the blood group of the deceased, thereby establishing necessary link between the weapon of assault and its use in commission of the offence.

22. Though the prosecution has also relied on the evidence of P.W.7 Vijaykumar, as an eye witness, considering the fact that his name is not finding place in the F.I.R., lodged immediately after the incident and his statement is recorded four days after the incident, in our considered opinion, accepting the submission of learned counsel for the appellant, even if the evidence of this witness is excluded from consideration, for the sake of argument, that does not affect the merits and credibility of the prosecution case, which is otherwise proved on record from sole testimony of P.W.2 Mallayya, whose evidence we find more than sufficient to prove the guilt of the appellant beyond reasonable doubt.

23. Consequently, this appeal holds no merit. Hence the

appeal stands dismissed, confirming the conviction and sentence of appellant No.1.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]