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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 847 OF 2008**

Subhash Devya Ravate	]
Age 32 years, Occ: Agri-Labour	]
Residing at Chari Kandorpada,	]
Taluka Dahanu, Dist. Thane	]
(At present in custody of	]
Nashik Road Central Prison)	]..Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]
(At the instance of Kasa Police Station]	
District Thane)	].. Respondent

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Mr. S.V. Marwadi Advocate along with Mr. Kartik Garg i/b
 Mrs. Sunita Sharma Advocate for the Appellant
 Mrs. A.S. Pai A.P.P. for the State

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

DATED : JUNE 17, 2015

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

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 1.7.2008 passed by the learned 3rd Additional Sessions Judge, Palghar

in Sessions Case No. 123 of 2006. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to R.I. for life and fine of Rs. 1000/- in default R.I. for four months.

2 The prosecution case, briefly stated, is as under:

Deceased Suresh was the husband of P.W. 1 Gulab. P.W. 2 Harshala was the daughter of deceased and P.W. 1 Gulab. They were all residing at Kandorpada in District Thane. The incident occurred on 18.5.2006 at about 11.30 p.m. The appellant was residing near the house of the deceased. There was a dispute between the appellant and the deceased on account of partition of land. On 18.5.2006 at night, P.W. 1 Gulab was cooking food inside the house. Her husband Suresh was sleeping outside the house. Gulab heard some noise, hence, she came out of the house. She saw the appellant was armed with axe. The appellant was inflicting blows with axe on the head of her husband. When Gulab intervened, the appellant pushed her away. P.W. 2 Harshala also came out of the house. She also noticed the appellant inflicting blow with axe on the head of her father Suresh. Suresh sustained bleeding injury on his head and he died on the spot. Gulab

tried to call neighbours but nobody came to her rescue. Gulab was frightened and as it was late at night, early the next morning she went to the police station and lodged F.I.R. Thereafter investigation commenced. The dead body of Suresh was sent for post-mortem. During the post-mortem, on external examination, the following injuries were found on the body of Suresh:

- "(1) Incised wound below left ear measuring 8 cm x 5 cm, margins sharp;
- (2) Incised wound 2 cm. below 1st first wound measuring 4 cm. x 3 cm. x 4 cm. margins sharp;
- (3) Incised wound 3 cm. behind 2nd wound measuring 12 cms. x 7 cm. x 11 cm. "

According to the Doctor, all the above wounds involved underlying scalp, skull and brain and depressed fracture of left occipital bone was seen. According to the Doctor, the depressed fracture wound was corresponding to the external injuries and the cause of death was "head injury, subdural, subarachnoid hemorrhage due to hard and heavy sharp object". After completion of investigation, the charge sheet came to be filed against the appellant. In due course, the case was committed to the Court of Sessions for trial.

3 Charge came to be framed against the appellant under section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned Advocate for the Appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that there is no merit in the appeal.

5 The conviction of the appellant is based on the evidence of two eye witnesses i.e. P.W. 1 Gulab and P.W. 2 Harshala. Gulab was the wife of deceased Suresh and Harshala was the daughter of Suresh. They were all residing at village Kandorpada in District Thane. Gulab has stated that the house

of the appellant was situated at a distance of about 50 feet away from her house. Gulab has stated that on 18.5.2006 at night time, she was cooking food inside the house. Her husband Suresh was sleeping outside the house. Gulab heard some noise, hence, she came out of the house. She saw the appellant was armed with axe. The appellant was inflicting blows with axe on the head of her husband. When Gulab intervened, the appellant pushed her away. P.W. 2 Harshala also came out of the house. Harshala also noticed the appellant inflicting blow with axe on the head of her father Suresh. Both of them shouted. The appellant ran away. Gulab noticed that her husband had sustained bleeding injury on the head and he had died on the spot. As she was frightened, she did not go to the police station during the night time and she went to the police station in the early morning. The evidence of Gulab further shows the motive for the appellant to commit the offence. Gulab has stated that the appellant had dispute with her husband on account of partition of land and hence, the appellant had assaulted her husband.

6 P.W. 2 Harshala is the second eye witness in the present case. She has stated that deceased Suresh was her

father and P.W. 1 Gulab is her mother. She knew the appellant as he was her cousin brother. The appellant was residing a little away from their house. Harshala has stated that on 18.5.2006 at night time, her father and her mother were in the house. After dinner, her father went outside the house. He was sleeping on the 'Machan' outside the house. The height of "Machan" was 3 feet. Her mother heard shouts of her father, hence, her mother went out of the house. Then her mother also shouted, hence, Harshala came out of her house. She saw the appellant inflicting blow with axe on the head of her father. Her father sustained bleeding injury on the head and died on the spot. The appellant then ran away. Harshala has stated that she had seen the incident in the moon-light. On careful perusal of the evidence of P.W. 1 Gulab and P.W. 2 Harshala, we find that nothing has been elicited in their cross-examination so as to cause us to disbelieve their evidence. We find their evidence inspires implicit confidence, hence, we have no hesitation in relying on the same.

7 Mr. Marwadi, the learned counsel for the appellant submitted that it was totally dark as there was no electric supply, hence, the evidence of Gulab and Harshala that they

witnessed the appellant assaulting Suresh with an axe on his head, is not reliable. As far as this submission is concerned, it may be noted that both Gulab and Harshala have stated that they saw the incident in the moon-light. The incident occurred in the month of May, hence, at that time, the sky would be clear and as the appellant was known to them as the appellant was residing 50 feet away from their house and was related to both these witnesses, hence, it cannot be said that the appellant was mistakenly identified by the witnesses. Moreover, it is seen that the evidence of these two eye witnesses is fully corroborated by the medical evidence, which we have discussed in detail in para 2.

8 On going through the evidence of two eye witnesses i.e. P.W. 1 Gulab and P.W. 2 Harshala, we are of the opinion that their evidence is sufficient to sustain the conviction, hence, it is not necessary to advert to the remaining evidence. Looking to the evidence of these two eye witnesses, we are of the opinion that there is no merit in the appeal. Appeal is therefore, dismissed.

[DR.SHALINI PHANSALKAR-JOSHI,J.]

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