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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 775 OF 2012

1. Anil Tukaram Patil
Age 36 yrs. Occu. Agricultural and
Business
2. Sunil Tukaram Patil
Age 34 yrs., Occu: Agricultural
Both R/at Sainik Takali, Tal: Shirol
Dist. Kolhapur

.. Appellants
(Org.Accd.Nos.1 & 2)

Versus

The State of Maharashtra

.. Respondent

Dr. Yug Mohit Chaudhary and Mr. Abhaykumar Apte, Appointed Advocate
for appellants.

Mr. H. J. Dedhia, APP for State.

CORAM: P. V. HARDAS &
A. S. GADKARI, JJ.

JULY 08, 2015.

ORAL JUDGMENT [Per P. V. Hardas, J.] :-

1. The appellants/Original Accused Nos.1 and 2, who stand
convicted for offence punishable under Section 302 read with Section 34

of the Indian Penal Code and sentenced to imprisonment for life and each accused to pay fine of Rs.10,000/-, in default of which to undergo further RI for six months, by the Additional Sessions Judge, Jaysingpur, by judgment dated 05/05/2012, in Sessions Case No. 02 of 2010, by this appeal challenge their conviction and sentence.

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

PW 19 – API Vilas Supe, who was attached to Kurundwad Police Station and was on duty on 15/10/2009, received a telephone call at about 7.15 p.m. from the Police Patil of village Sainik Takali that the appellants had committed murder of one Dattatray Patil. PW 19 – API Supe, accordingly, directed PW 14 – Police Constable Nivrutti Desai to take an entry regarding the telephone case in the station diary. The said entry is at Exh. 81. PW 19 – API Supe along with the police staff then proceeded to the scene of the incident at village Sainik Takali. The scene of the incident was in front of one Jay Maharashtra Mutton Shop. On reaching the scene of the incident, they noticed the dead body of deceased Dattatray lying in front of the shop. The owner of the shop, by name

Kamble was taken into custody, as he was an eye witness to the incident. PW 19 – API Supe was not certain if the owner of the Mutton Shop was an eye witness or an accused and therefore, was taken into custody. Thereafter, PW 19 - API Supe sent PW 10 – Ranjit Patil for lodging the FIR. The report of PW 10 – Ranjit Patil was scribed at Exh. 56 and accordingly an offence vide Crime No. 78 of 2009 was registered under Sections 302, 323, 504, 506 read with Section 34 of the IPC.

Thereafter, in the presence of two panch witnesses, an inquest panchanama of the dead body of deceased Dattatray was drawn at Exh. 15. The dead body was referred for postmortem examination to the Rural Hospital, Dattawad. Enquiry was made with one Mr. Kamble, owner of the Mutton Shop and thereafter his statement was recorded. On the next day, statements of 3 to 4 witnesses were recorded and PW 19 – API Supe returned to the scene of the incident and in the presence of the two panchas drew the scene of the incident panchanama at Exh. 17. From the scene of the incident, sample of ordinary mud and blood mixed mud and blood stained grass were obtained. On the same day, statements of PW 1 – Sanjay Kamble and others were recorded.

On 17/10/2009, API Supe received information about the presence of accused at village Borgaon and, therefore, proceeded to Borgaon and arrested the accused under the arrest panchanamas. The accused were brought to the police station. The clothes of the accused were seized on 18/10/2009 under seizure memo at Exh. 33. On the same day, during custodial interrogation, accused no.1 – Anil expressed his willingness to point out the place where the motorcycles, one sickle and a knife had been concealed. Accordingly, a memorandum of accused no.1 was drawn at Exh. 98. The accused no.1 -Anil led the police and the panchas to his house at village Sainik Takali and produced a knife and a sickle from the grass near the coconut tree in his compound. Accused thereafter pointed out two motorcycles parked in front of his house which were also seized. Photographs were taken which are at Exhs. 45 to 51. The seizure memo is at Exh. 99. The sketch of the scene of the incident is Article “B”. On 19/10/2009, statements of witnesses, including PW 7 – Arjun Patil, were recorded.

The seized articles were referred to the C.A. along with PW 16 – Police Constable Ravindra under requisition at Exh. 92. The Judicial Magistrate, First Class, Kurundwad recorded the statements of witnesses

under Section 164 of Cr.P.C. Further to the completion of investigation, a charge-sheet against the accused was submitted.

Postmortem on the dead body of deceased Dattatray was performed by PW 11 – Dr. Rajesh Aundhkar, who noticed the following external injuries on the dead body of deceased Dattatray :-

(i) Stab Injury:

right side of chest approx. 3 cms. below nipple. Size: Approx. 4 x ½ cm, clear cut edges. Dept.: From body surface upto lower.

(ii) Stab Injury:

Middle of chest just right to sternum body. Size: approx. 3 cms. x 1 ½ cm. Edges: Clear cut.

(iii) Stab Injury:

Site: Above umbilicus just, 3 to 4 cm., above it. Approx. 3 x 1 cms. Greater Omentum seen cut of cut injuries.

(iv) Stab Injury :

Site: On the middle to lateral side of the back from thoracic region in oblique position. Size: Approx. 4 cm x

1 ½ cm x depth upto left kidney.

(v) Stab Injury:

Site: on the middle of the back just right lateral in upper side. Measurement 4 x 1 cm. Edges: clear cut edges.

(vi) Incised injury on occipital region on the Head. Size: approx. 5 cms. x 2 cm x 3 cms. Bleeding present.

(vii) CLW, above penile region at Hypo gastric region. 1 x ½ cm. Clear cut edges.

He opined that the injuries had been caused within 12 hours and the injuries had been caused by sharp and cutting object. The injuries were ante-mortem. He has opined that the incised wounds could be caused by sharp weapons like knife, dagger, arrow etc. He further opined that injuries nos.1 and 2 could be caused by the sickle, Article 15, while the fourth incised wound could be caused by the knife, Article 16.

On internal examination he noticed the following injuries:

(i) Injuries : Fracture skull outer table (vault)

(ii) Skull : Fracture outer table Jt. Skull, Approx. 3 cms. x 0 cm.

(iii) Brain: Extra dural hemorrhage and also intra cranial hemorrhages.

(iv) Thorax: Walls, ribs: ribs intact but, blood collected in thoracic cavity.

(v) Pleura : Pleura cut.

(vi) Right Lung: incised cut injury on the middle of the right lung. Approx. 2 cms. x ½ cms. and congested.

(vii) Left lung : Left lung congested and intact.

(viii) Peritoneum : greater omentum come out of the stab injury over abdomen, and haemo-peritoneum.

He, therefore, opined that the cause of death was due to hemorrhagic shock due to incised stab injuries to all vital organs (Liver, lung, kidney and brain) of body due to Hemo thorax and Hemo peritoneum and fractures to skull with extra-dural and intra cranial hemorrhages. Postmortem report is at Exh. 60.

3. On the case being committed to the Court of Sessions, trial

court vide Exh. 2 framed charge against the appellants for offence punishable under Section 302 read with Section 34 of the IPC. The appellants denied their guilt and claimed to be tried. Prosecution in support of its case examined 19 witnesses. The defence of the appellants was of denial. Though the prosecution had examined four eye witnesses, PW 1 – Sanjay Kamble and PW 9 – Baburao Patil did not support the prosecution and were declared hostile. PW 4 – Appasaheb Mulla was disbelieved by the trial court and the trial court, therefore, placed implicit reliance on the testimony of PW 7 – Arjun Patil. The trial court also relied upon the circumstantial evidence and accordingly convicted and sentenced the appellants as afore-stated.

4. We have heard Mr. Yug Mohit Chaudhary and Mr. Abhaykumar Apte, learned counsel for the appellants and the learned APP on behalf of the respondent – State 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.

5. As pointed out by us above, PW 1 – Sanjay and PW 9 –

Baburao did not support the prosecution and were declared hostile. In respect of the evidence of PW 4 – Appasaheb, the trial court at paragraph 46 of the judgment as observed that the evidence of PW 4 – Appasaheb did not whole heartedly support the prosecution and his evidence was not free from doubt and, therefore, the evidence of PW 4 – Appasaheb was left out of consideration. Even otherwise, PW 4 – Appasaheb had not deposed to have seen the accused actually assaulting the deceased. Thus, conviction rests on the sole testimony of PW 7 – Arjun Patil. Before we advert to the evidence of PW 7 – Arjun Patil, it would be useful to refer to the evidence of PW 10 – Ranjit Patil, who had lodged the FIR at Exh. 56.

6. PW 10 – Ranjit Patil deposes that deceased Dattatray was his cousin, who was residing in village Sainik Takali. He further deposes that in the year 2006, there was a quarrel between accused no.1 – Anil and deceased Dattatray and due to that, deceased Dattatray was prosecuted for attempting to commit murder of accused – Anil. In the said case, however, Dattatray was acquitted. Since then, the relations between the accused and the deceased were strained. On 14/8/2009, there was a quarrel between accused – Anil and deceased Dattatray. However, due to intervention of Balasaheb Patil and Suresh Koli the said dispute was settled. At that time,

accused – Anil had threatened that Dattatray should be advised, otherwise accused – Anil would kill Dattatray Patil. On 15/10/2009 at about 6.30 p.m. in the evening, PW 10 – Ranjit Patil arrived at the ST Bus stand from his agricultural field and met one Arun Arjun Patil and Appasaheb Shankar Patil. It may incidental to state that Arun Arjun Patil is the son of PW 7 – Arjun Patil. Those two persons informed PW 10 – Ranjit Patil that there was a quarrel between accused – Anil and deceased Dattatray. They also disclosed that after the quarrel was over, deceased Dattatray and one Baburao Patil had gone towards the Mutton Shop of one Sanjay Kamble for bringing mutton. Those two persons had also informed PW 10 – Ranjit Patil that the deceased and Baburao had gone on a motorcycle. Later on, one Suresh Patil gave a message on telephone that Dattatray Patil was lying with injuries in his field. The agricultural field of said Suresh Patil is in front of the Maharashtra Mutton Shop of one Sanjay Kamble. On hearing this, PW 10 – Ranjit Patil along with his friend Arun Patil (son of PW 7 – Arjun Patil) and other relatives, went near the Maharashtra Mutton Shop. PW 1 – Sanjay Kamble was present in the shop and pointed out the scene of the incident where injured Dattatray Patil was lying. They noticed that Dattatray Patil had succumbed to his injuries. Accordingly, the Police Patil of the village was informed and after some time the police from

Kurundwad Police Station arrived at the scene of the incident. A report of PW 10 – Ranjit Patil was scribed.

7. In cross-examination, he has admitted that the police had arrived at the scene of the incident at about 7.15 p.m. and had commenced their enquiry. They were enquiring from the villagers as to how the incident had occurred. An omission is elicited that he had not stated in his report that he had informed the Police Patil about the incident. In cross-examination he has admitted as correct that he had contested the election from Ward No.2. He has, however, denied that Anita Arjun Patil had contested the election from his panel. He has admitted as correct that he had contested the election from the panel of one D.R. Patil.

8. Prosecution has examined PW 7 – Arjun Patil, who deposes that he was resident of village Sainik Takali and was residing along with his wife, two sons, daughter-in-law and grad-children and his mother. According to him, his sister Banabai was residing at Sambhaji Nagar, which is at a distance of about 2 to 4 furlongs from village Sainik Takali. According to him, he used to frequently go to Sambhaji Nagar for meeting his sister. According to him, on 15/10/2009, at about 4 to 4.15 p.m. he had

gone to the house of his sister Banabai at Sambhaji Nagar on his bicycle. He thereafter stayed in the house of Banabai for about 1 ½ hours and started returning home at about 6 to 6.15 p.m. When he came near the Mutton Shop of Sanjay Kamble, he noticed quarrel between accused and deceased Dattatray. One Anandrao Patil and Baburao Patil were requesting accused not to assault deceased Dattatray Patil. Accused – Anil Patil and accused – Sunil Patil were not in a mood to listen. They dragged deceased Dattatray on the road and started assaulting him. Accused – Anil was armed with a sickle while accused Sunil had held the hands of Dattatray Patil. Accused – Anil thereafter assaulted Dattatray by a sickle on his stomach, back and head. Dattatray Patil died on the spot and on seeing that Dattatray was dead, PW 7 – Arjun Patil, along with the others, who were present there, fled from the scene of the incident due to fear. Accused also fled from the scene of the incident. According to Arjun Patil he went to his house. He admits that his statement was recorded almost after four days of the incident. He further deposes that on 16/10/2009 i.e. on the next day of the incident, he along with his wife, had gone to the maternal home of his wife at village Bachche Savarde as he had received a message that his mother-in-law was indisposed. He returned back to his village on 18/10/2009 at about 2 to 3 p.m. as it was Diwali.

9. In cross-examination, he has admitted that his mother-in-law has four sons and four daughters-in-law, who were looking after her. He has admitted as true that he had gone merely to meet his mother-in-law and to see her. He has admitted that about 2 to 4 days prior to Diwali, he had received a message that his mother-in-law was ill. He has admitted that the message was that his mother-in-law was not feeling well and if possible, PW 7 – Arjun Patil should come to visit her. He has also admitted that it was a usual message. He has also admitted that on receipt of the said message, he had not immediately gone to see his mother-in-law. He has admitted that he had returned back to his village as festival of Diwali was being celebrated in his house also. He then claims that he was informed by his son, on his arrival, that the police had come to the house. He has admitted that he had not met the police on 18/10/2009.

In further cross-examination, he has admitted that on the day of the incident, he had met his son Arun in the night after the incident. He has admitted that he had not discussed the incident with his son Arun, but had only informed the incident to his wife. He has also admitted that his son also did not discuss anything about the incident with him. He has

admitted as correct that on the same night the police had come to the village to investigate in the said crime. He has admitted that he was contemplating going to the police and narrating the incident to them. He has admitted that excepting his wife, he had not disclosed the incident to anyone else. He has admitted that his son Arun was also cited as a witness in the case.

He has admitted that his wife had contested the Grampanchaya Election from Ward No.2 from the panel of PW 10 – Ranjit Patil. He has admitted that she had contested the said election from the panel of D.R. Anna Patil. He then admits that he does not know if his son Arun is friend of PW 10 – Ranjit Patil. He has admitted that he had met his son Arun on the day of the incident at about 9 to 9.30 p.m. He has also admitted that Arun was present in the house till PW 7 – Arjun Patil had left for village Bachche Savarde. Omission is elicited that he had not disclosed in his previous statement about going to visit his mother-in-law at village Bachche Savarde.

10. Learned counsel for the appellants has urged before us that no reliance whatsoever can be placed on the testimony of PW 7 – Arjun Patil

in the light of the fact that his statement was recorded after four days of the incident and on account of his unnatural behaviour in not informing his son Arun. The learned APP has supported the findings arrived at by the trial court.

11. It is true that a conviction on the testimony of a sole witness can be sustained, provided the testimony of the solitary witness is of such a quality as would inspire the confidence of the court in implicitly relying on the said testimony. The law does not insist on quantity, but insists on quality. The evidence of PW 10 – Rajint Patil, the first informant, clearly discloses that it was Arun Patil, son of PW 7 – Arjun Patil, who had informed him about the quarrel. Arun Patil had then accompanied him to the place where the dead body was found. We find it inexplicable that PW 7 – Arjun Patil would not disclose about the murder of Dattatray Patil to his son Arun. Wife of PW 7 – Arjun Patil as well as PW 10 – Ranjit Patil had contested the election from the same panel. They were residents of the same village and the relationship between Dattatray Patil and Ranjit Patil would not be unknown to PW 7 – Arjun Patil. There is an omission about PW 7 – Arjun Patil visiting his mother-in-law, who was said to be indisposed. The explanation is a lame explanation which is coming before

the court for the first time. The prosecution has not offered any explanation for a belated recording of the statement of this witness. PW 7 – Arjun Patil claims that he had fled from the scene of the incident. We find this explanation difficult to believe for the simple reason that if he could stand on the road and witness the incident, there was no reason for him to flee after the incident as neither accused had made any threatening move towards him nor had the accused threatened him. In fact, immediately after the incident, the accused themselves had fled from the scene of the incident. The evidence of the autopsy surgeon reveals that two weapons had been used for causing the injuries to deceased Dattatray Patil. PW 7 - Arjun Patil only refers to accused – Anil being armed with a sickle but makes no reference to accused being armed with a knife / dagger. We thus find that implicit reliance cannot be placed on the sole testimony of PW 7 – Arjun Patil for sustaining the conviction of the appellants. The testimony of PW 7 – Arjun Patil is not of such a quality as would inspire the confidence of the court for implicitly placing reliance on the said testimony. This witness, in our opinion, is wholly unreliable witness and, therefore, no amount of corroboration can strengthen the otherwise infirmed testimony of PW 7 – Arjun Patil.

12. The other evidence against the appellants is the evidence of seizure of clothes of the accused under seizure memo at Exh. 33. Prosecution has examined PW 5 - Appasaheb Desai, who deposes that on 18/10/2009, he was called to the police station, where the clothes of the accused, which were found blood stained, were seized. In cross-examination, he has admitted as true that the blood stains on the front and rear side of those clothes were corresponding to each other. He has also admitted that when he had gone to the police station, the clothes were kept on the table and thereafter the clothes were taken out. The admission of this witness that the blood stains on the front and the rear side of the clothes corresponded to each other, would certainly indicate that the blood stains had been sprinkled on the shirt when the shirt had been folded. The statements of the witnesses recorded under Section 164 of Cr. P. C. do not constitute substantive evidence. Even if the witnesses are contradicted with the portions from the 164 statements, the said portions do not constitute substantive evidence. The Investigating Officer has admitted that PW 1 – Sanjay Kamble had been taken into custody and when he was released, he had injuries on his person and Sanjay Kamble had shown the injuries to a private medical officer. PW 19 – API Supe had admitted that he had himself obtained the anticipatory bail on the allegations that he had

demanded ransom and had abetted the suicide of one Mr. Mubin Patwegar. In cross-examination also PW 19 – API Supe has admitted that when he had arrested the accused, it was not mentioned in the arrest panchanama about the clothes of the accused being blood stained. In respect of the discovery of the weapons, he has admitted that the accused had been handcuffed.

13. In our opinion, since the substantive evidence of the eye witnesses is disbelieved by us, the conviction of the appellants cannot be sustained on the basis of the discovery of the weapons, even though the weapons are said to be blood stained. The discovery of the weapons may imply, (I) that the accused himself had kept the weapons or (II) that the accused was aware as to the place where the weapons had been concealed or (III) that the accused had seen someone placing the weapons. An irresistible inference, therefore, cannot be drawn on the basis of the discovery of the weapons that it was the accused who had concealed the weapons and that it was the accused who had used the weapons in the commission of the offence. This is so in the light of the fact that in our opinion implicit reliance cannot be placed on the testimony of PW 7 – Arjun Patil. The conviction of the appellants, therefore, on the basis of the

discovery of the weapons alone cannot be sustained. The appellants, in our opinion, are entitled to be given the benefit of doubt.

14. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the appellants is hereby quashed and set aside and the appellants are acquitted of the offence with which they were charged and convicted. Fine, if paid by the appellants, be refunded to them. Since the appellants are in jail, they be released forthwith, if not required in any other case.

Fees payable to Mr. Abhaykumar Apte, learned counsel appointed for the appellants quantified at Rs.5000/-.

(A. S. GADKARI,J.)

(P. V. HARDAS,J.)