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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1252 OF 2007

Subhash Gangadhar Jadhav
Age 36 years, Occ: Service
R/o Makarandwadi, Tal. Deola
District – Nashik.

.. Appellant

Vs.

The State of Maharashtra

.. Respondent

Mr. M. S. Karnik for appellant.
Mr. H. J. Dedhia, APP for State.

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

MARCH 05, 2015.

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

1. The appellant, who stands convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs.500/-, in default of which to undergo RI for one month, by the Adhoc Additional Sessions Judge-3, Nashik, by judgment dated 27/12/2006, in Sessions Case No. 129 of 2006, by this appeal questions the correctness of his conviction and sentence.

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

PW 8 - API Sanjay Savant, who, on 3/5/2006, was attached to the Wadivarhe Police Station and was on petrolling duty, was informed by ASI Bhatire on telephone that there was some incident of quarrel in the Symbiosis Company. On receipt of the said information, PW 8 – API Savant proceeded to the scene of the incident and on reaching the scene of the incident, noticed the dead body of deceased Kanhu Rao. Wife of deceased Kanhu Rao was present there, whose statement was recorded by PSI Patil. PW 8 – API Savant then drew the inquest panchanama of the dead body of deceased Kanhu Rao at Exh. 12 in the presence of PW 3 – Ashok. He also drew the scene of the incident panchanama at Exh. 8 in the presence of PW 1 – Dashrath. The appellant/accused was arrested and statements of witnesses were recorded. The seized property was then referred to the Chemical Analyzer at Nashik under requisition at Exh. 23. The reports of the C.A are at Exhs. 24 to 26. Further to the completion of investigation, a charge-sheet against the appellant was submitted.

Postmortem on the dead body of deceased Kanhu Rao was

performed by PW 7 – Dr. Kishorprasad Shrivastava, who noticed the following external injuries :-

- (i) Contused lacerated wound on occipital region, size 5 cm x 1 cm and it was bone deep.
- (ii) Contused lacerated wound on occipital parietal region, lateral to mid line on right side, 4 x 1 cm bone deep.
- (iii) Incised wound on left temporo parietal region 6 cm x 1 cm x bone deep.
- (iv) Contused abrasion on right arm.

On internal examination, he noticed fracture of the occipital bone and fracture of left temporo parietal bone. According to him all the injuries were antemortem. He also noticed laceration of the brain over the occipital and the temporo parietal lobes and hemispheres. The size of the lacerations was 3 cm x 1 cm x 3 cm and 5 cm x 1 cm x 1 cm. He, therefore, opined that the probable cause of death was due to head injury with intra-cranial and intra-cerebral haemorrhage with laceration over brain with haemorrhagic shock. The postmortem report is at Exh. 18.

3. On the case being committed to the Court of Sessions, trial court framed charge against the appellant for offence punishable under Sections 302, 323 and 504 of the IPC. The appellant denied his guilt and claimed to be tried. Prosecution, in support of its case, examined eight witnesses. The defence of the appellant was of denial. The trial court, upon appreciation of the evidence, convicted and sentenced the appellant as afore-stated.

4. The entire prosecution case against the appellant hinges on the testimony of two witnesses i.e. PW 4 – Shridhar, son of deceased Kanhu Rao and PW 5 – Ranjanabai, wife of the deceased. In order to effectively deal with the submissions advanced before us by Mr. Karnik, the learned counsel for the appellant and the learned APP, it would be useful to refer to the evidence of the prosecution witnesses.

5. In so far as the evidence of PW 4 – Shridhar is concerned, though he has deposed at having witnessed the incident, which had occurred at about 12 mid-night, the cross-examination reveals that he was a tutored witness as he has admitted that his statement had been read over and he had been asked to depose as per the statement. Apart from this, he

has admitted in cross-examination that the usual time at which he sleeps is about 8 to 8.30 p.m. There appeared to be no ostensible reason as to why PW 4 – Shridhar, who is a child witness, would awake at about 12 mid-night. He also does not claim that he had awakened on hearing the cries or the noise of the quarrel. We, therefore, find that implicit reliance cannot be placed on the testimony of PW 4 – Shridhar.

6. PW 5 – Ranjanabai, wife of deceased Kanhu Rao, deposes that on the day of the incident she had prepared tea for having served to PW 6 – Munna and the appellant. According to her, she was residing in one hut, while PW 6 – Munna was residing in the other hut. After preparing the tea, the deceased had gone for serving the tea to the appellant as well as PW 6 – Munna. According to her, the deceased had asked the appellant to take tea, but the appellant had declined to drink tea, saying that he would drink tea subsequently. On that, deceased had told the appellant not to be arrogant as the appellant used to eat and drink with the deceased. It appears that there was some quarrel in respect of drinking of tea and according to PW 5 – Ranajanabai, the appellant dealt 4 to 5 blows of a wooden rod of an axe on the head of deceased Karnik. In cross-examination, she has admitted that the appellant was working at the machine and the deceased had gone and

had dragged the appellant by catching his collar. She has also admitted in cross-examination that the appellant then fled towards the room of Munna. She has, however, denied the suggestions that the deceased had brought an axe with an intention of assaulting the appellant and when the appellant had fled to the room of Munna, the deceased had hit the axe on the door of the room of Munna.

7. Prosecution has examined PW 6 – Munna, who gave out a different version, which has been falsified in the light of the portions marked at “A” and “B” in his previous statement. In cross-examination on behalf of the appellant, he has admitted that the deceased had slapped the appellant and the appellant, therefore, had fled to the room of Munna. He has admitted in the cross-examination about some scuffle between the deceased and the appellant. He has also admitted that deceased was armed with an axe and was intending to assault the appellant. Interestingly, an admission is elicited in the cross-examination of this witness that PW 5 – Ranjanabai was standing outside her house when the incident was going on. The aforesaid admission in the cross-examination, which is elicited on behalf of the appellant, would certainly not only corroborate but would fortify the case of Ranjanabai that she had witnessed the incident.

8. Mr. Karnik, learned counsel for the appellant, by referring to the scene of the incident panchanama at Exh. 8 and by referring to the evidence of PW 1 – Dashrath, has urged before us that the gate of the Company was on the eastern side and, therefore, it would be impossible for PW 5 – Ranjanabai to have witnessed the incident while standing outside her room. Mr. Karnik, learned counsel for the appellant has further urged before us that in the light of the fact that Ranjanabai is a solitary witness, the evidence is not of such quality as would inspire the confidence of the court for its implicit acceptance. In the alternative, it is urged by Mr. Karnik, learned counsel for the appellant, that the assault on deceased by the appellant was not a premeditated assault and it was on account of a sudden quarrel and, therefore, exception 4 of Section 300 would apply and the appellant would, at the most, be liable to be convicted for offence punishable under Section 304 Part II of the IPC. The learned APP has urged before us that the assault on the deceased, though may have been in the heat of the quarrel between them, yet the appellant had inflicted the injuries to deceased which were sufficient in ordinary course of nature to cause death and the appellant had acted with cruelty by inflicting 3 to 4 blows of the wooden rod.

9. The evidence of PW 5 – Rajanabai, in our opinion, establishes the fact that it was the appellant who had assaulted deceased Kanhu Rao. There is no manner of doubt that she is an eye witness who had promptly lodged the FIR. The evidence of Ranjanabai also does not indicate that the deceased had offered a provocation of such magnitude to the appellant as would drive the appellant to assault the deceased. It is no doubt true that there was some altercation between the deceased and the appellant, but the altercation was in respect of the deceased offering tea to the appellant and the appellant declining to drink tea. The evidence does not establish that there was any scuffle and during the fight the appellant had inflicted the blow of the wooden rod on the head of the deceased. The appellant had hit the rod on the head of the deceased at least twice. Injury Nos.1 and 2 in the postmortem report at Exh. 18 demonstrate that those injuries were caused on account of the assault by wooden rod. Injury No.3 is an incised wound which obviously could not have been caused by the assault by wooden rod. Deceased admittedly was found on a heap of scrap and thus the incised wound i.e. Injury No.3 could be possible on account of the fall of deceased on the scrap. The Injury No. 4 is multiple contused abrasion which could be as a result of fall on the scrap also. Thus, the evidence of

the Medical Officer i.e. PW 7 – Shrivastava establishes that the appellant had assaulted the deceased with a wooden rod on the head twice. The force of the blow was such that there were two fractures, one of the occipital bone and other of the temporo parietal bone. There was laceration to the brain also. Thus the case of the appellant, in our opinion, is not a case which would be covered by exception 4 to Section 300. The appellant had intentionally caused injuries to deceased and those injuries were sufficient in ordinary course of nature to cause death of deceased and the deceased had died on account of those injuries. The case of the appellant, therefore, would be covered by thirdly of Section 300 and would be covered by the ratio of the judgment of the Supreme Court in Virsa Singh vs. State of Punjab [**AIR 1958 SC 465**].

10. Thus, having considered the submissions advanced before us, in our opinion, there is no merit in the appeal and the appeal filed by the appellant is, therefore, dismissed, confirming his conviction and sentence.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)