

JPP

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

CRIMINAL APPEAL NO. 1129 OF 2009

Shivaji Ramchandra Doltode,
Age : 47 years,
R/at : Ekatpur, Taluka Sangola,
District : Solapur,
(At present detained in Yerawada
Central Prison, Pune).

... Appellant.
(Orig.Accused)

V/s.

The State of Maharashtra.

... Respondent.

Mr. D.G. Khamkar for the Appellant.
Mrs. S.D. Shinde, APP for the State.

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

FEBRUARY 20, 2015.

ORAL JUDGMENT (PER P.V. HARDAS, J.) :-

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 fine of Rs.500/-, in default of which to undergo further imprisonment for one

month, by the Additional Sessions Judge, Pandharpur, by Judgment dated 20.8.2009 in Sessions Case No.74 of 2007, by this Appeal questions the correctness of his conviction and sentence.

2. Facts in brief as are necessary for the decision of this Appeal may be stated thus.

PW-10 Head Constable Ravansidha Chandneri, who was attached to the Sangola Police Station and was on duty on 11.8.2007, recorded the report of PW-1 Suresh at Exhibit 11. On the basis of the said report, he registered an offence vide Crime No.158 of 2007 under Section 302 of the Indian Penal Code. Upon registration of the offence, he handed over the investigation to PW-12 PI Sudhakar Tilekar.

PW-12 PI Sudhakar Tilekar, who was attached to the Sangola Police Station was entrusted with the investigation of Crime No.158 of 2007 and accordingly visited the scene of the incident alongwith PW-9 Police Constable Gurav. On reaching the scene of the incident, they drew the inquest panchnama of the dead body of deceased Mangal in

the presence of panchas at Exhibit 28. On 12.8.2007, PW-12 PI Tilekar drew the incident panchnama in the presence of panchas at Exhibit 30. He recorded the statements of the witnesses and arrested the accused under arrest panchnama. The clothes on the person of the accused were also seized in the presence of panchas. The clothes of deceased Mangal were seized in the presence of panchas under seizure memorandum at Exhibit 40.

On 13.8.2007, during custodial interrogation, the Appellant expressed his willingness to point out the hammer concealed by him. Accordingly, a memorandum was drawn in the presence of panchas at Exhibit 22. The Appellant led the Police and the Panch and produced a hammer which was seized in the presence of panchas under seizure memorandum at Exhibit 24. Statements of witnesses were recorded and on 30.8.2007, the seized property was referred to the Chemical Analyzer under requisition at Exhibit 51. On 7.9.2007, a letter was issued to the Tahasildar for drawing the sketch of the scene of the incident. Accordingly, PW-7 Harishchandra drew the sketch of the scene of the incident

and the sketch is at Exhibit 37. Further to the completion of investigation, a charge-sheet against the Appellant was submitted.

3. Postmortem on the dead body of deceased Mangal was performed by PW-6 Dr. Manoj Bansode, who noticed that deceased Mangal had sustained the following injuries :-

- (1) Compound fracture of left frontal bone extend towards left cheek oblique in direction measuring 8 inches x 4 x 4 inches.
- (2) Compound fracture of left temporal parietal region brain matter outside the skull.
- (3) There was depressed fracture of occipital bone of size 3 inches x 2-1/2 inches upto brain oblique in direction.

He opined that the above injuries were antemortem in nature and on internal examination, he noticed that the brain matter was pale and blood clots were seen outside the skull, meninges was destructed. He, therefore, opined that caused of death of deceased was acute cardio respiratory failure due to severe hemorrhagic shock due to multiple compound fracture of skull bone and injury to brain. Postmortem report is at Exhibit 33.

4. On the case being committed to the Court of Sessions, Trial Court vide Exhibit 4 framed charge against the Appellant for offence punishable under Section 302 of the Indian Penal Code. The Appellant denied his guilt and claimed to be tried. Prosecution in support of its case examined 12 witnesses while the accused in his defence examined DW-1 Pandurang. The Trial Court upon appreciation of the evidence convicted and sentenced the Appellant as afore-stated.

5. We have heard Mr. D.G. Khamkar, learned Counsel appointed for the Appellant and the learned APP 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.

6. Prosecution has examined PW-1 Suresh, son of the Appellant and deceased Mangal, who deposes that the Appellant was employed as a labour for harvesting of the sugar-cane and after the harvesting season was over, the Appellant used to work as a labour for crushing stones. He has further deposed that the Appellant was addicted to liquor. According to him, on the day of the incident i.e. on 11.8.2007, the Appellant had obtained an advance of Rs.10,000/- in respect of the harvesting of the sugar-cane. The advance had been obtained by the Appellant about 15 days prior to the incident. Nearly half of the amount of advance of Rs.10,000/- was spent by the Appellant in the consumption of liquor. According to Suresh, his uncles Macchindra and PW-11 Bhojling had come to the village and deceased Mangal had appraised them that the Appellant had spent huge amount of liquor. The uncles of the Appellant viz. PW-11 Bhojling advised the Appellant that he should not spend money on vices like liquor. Deceased Mangal was also telling the Appellant not to spend money on consumption of liquor. The Appellant used to

be annoyed and used to be abused and assault PW-1 Suresh as well as deceased Mangal. On the day of the incident, deceased Mangal was indisposed and the Appellant therefore had taken her to the hospital of Dr. Sonalkar at Sangola for medical treatment. Since it was a Saturday, PW-1 Suresh attended his school from 7.00 a.m. to 12.00 noon and returned home at about 12.15 p.m. Deceased Mangal was alone in the house as PW-1 Suresh was chopping wood in front of the house. At about 2.00 p.m. to 2.30 p.m. the Appellant returned home. The Appellant had consumed liquor and asked Suresh if Mangal had returned home from the hospital. Suresh replied in the affirmative and the Appellant therefore went inside the house. The Appellant then started abusing deceased Mangal and had stated to her that since Mangal had become arrogant, the Appellant would show her. The Appellant questioned Mangal as to why she had complained about the Appellant to Bhojling. The Appellant also questioned Mangal as to why she had disclosed to Bhojling that the Appellant had spent the advance received from harvesting the sugar-cane. According to PW-1 Suresh, deceased Mangal did not reply to the Appellant. After some

time, PW-1 Suresh heard the cry of his mother and then heard the noise of “hammering”.

On hearing the noise and the cry, PW-1 Suresh went inside the house and noticed that his mother was lying on the ground having sustained head injury. He also noticed blood oozing from the head injury. He noticed the Appellant standing near Mangal with a big hammer in his hand. Suresh therefore went out of the house and shouted from the courtyard. On hearing his cries, the neighbours rushed to the house. The neighbours included Jayashree Jagtap, Dilip Jagtap, Pandurang Jagtap and his aunt viz. Kamal Lengar. The neighbours saw the condition of deceased Mangal. The Appellant ran away before the arrival of these people. Suresh was frightened on account of the incident. Thereafter, there started raining and after the rain stopped, Suresh went to village Sonwadi on someones motor-cycle for telephoning his maternal uncle Bapu. He narrated the incident to his another maternal uncle on telephone and thereafter, returned home. In the meantime, his other uncles residing in the village returned to the house. The maternal uncle of Suresh came to

the house of Suresh at about 8.30 or 9.00 p.m. Suresh again narrated the entire incident to his maternal uncle and thereafter, along with his maternal uncle, went to the Police Station at Sangola. At Police Station Sangola, he lodged his report at Exhibit 11. After the report was lodged, the Police came to the house and conducted an inquiry. The dead body of Mangal was brought to the Government Hospital at Sangola for postmortem examination. Suresh has identified the hammer as Article 'A'. According to him, the said hammer belongs to the Appellant who used to keep it inside the house.

7. In cross-examination he has admitted that he does not know in whose name the agricultural land stands in which the house is constructed. He has admitted that he used to go on a bicycle to the school and it used to take him 15 to 20 minutes for reaching the school. He has denied the suggestion that a wooden plank was fitted on the wall of the house for keeping his school books and other articles. He has admitted that he does not know if his uncles Laxman and Bhagwan had lifted his mother Mangal and had placed her in front of the house as immediately after the incident he had

gone out of the house for making a telephone call. He has admitted that he could not name the person who had given me lift on the motor-cycle.

He has further admitted that at the time of the incident, some gunny bags of grain were placed adjacent to the wall inside the house. The gunny bags had been kept one on top of the other. He has admitted that on return from the hospital, Mangal had slept in the house by spreading a blanket. He has further admitted that he does not know if his maternal uncle was insisting on the Appellant for giving some part of the agricultural field to PW-1 Suresh. He has admitted that he does not know if there were quarrels between the Appellant and the maternal uncle of Suresh on that count. An omission is sought to be proved that he had not stated in his report at Exhibit 11 that the Appellant had dropped the hammer and had fled from the scene of the incident. However, since PW-1 Suresh had not stated so in his examination-in-chief, the aforesaid answer could not be elicited by way of an omission. Omission has been elicited that he had not stated in his report that deceased Mangal

used to tell the Appellant not to spend money on liquor. Omission is also elicited that he had not stated in his report that the Appellant used to assault PW-1 Suresh and deceased Mangal. Omission is elicited that he had not stated in his report that since the day of the incident was a Saturday, he had returned home from school at about 12.15 p.m. Omission has been elicited that he had not stated in his report that his uncle PW-11 Bhojling had advised the Appellant not to consume liquor. Omission is also elicited that he had not stated in his report that after the rain had stopped, he had telephoned his maternal uncle and had gone on the motor-cycle for telephoning his uncle.

8. Learned Counsel for the Appellant has urged before us that implicit reliance cannot be placed on the testimony of PW-1 Suresh in the light of the omissions which have been elicited. It is further stated that PW-1 Suresh had a grudge/animosity against the Appellant and therefore, was deposing adverse to the Appellant. The learned APP has urged before us that PW-1 Suresh is the son of the Appellant and yet has the courage to speak the truth and therefore,

implicit reliance can be placed on his testimony.

It is true that omissions have been elicited in the evidence of PW-1 Suresh qua the recitals of the FIR. A FIR is not an encyclopedic version of the events and therefore, minor omissions which do not touch the core of the prosecution case, cannot affect the credibility of an eye-witness who is otherwise found to be reliable. We do not find that PW-1 Suresh has deposed against the Appellant due to enmity. PW-1 Suresh is the son of the Appellant and yet has courageously stepped into the witness box and has deposed about the incident. In our opinion therefore, implicit reliance can be placed on the testimony of PW-1 Suresh.

9. Prosecution has examined PW-11 Bhojling. PW-11 Bhojling is the brother of the Appellant and did not support the prosecution and was declared hostile. In his examination-in-chief Bhojling has deposed that PW-1 Suresh had informed him that a big hammer had been kept on the gunny bags and on account of fall of the hammer, deceased Mangal, who was sleeping on the ground, had sustained the injuries. This

witness was cross-examined by the prosecution and contradictions at portion marked A, B and C have been put to the witness which have been duly proved by the Investigating Officer. The credibility of PW-11 Bhojling that Suresh had informed him that Mangal had sustained injuries accidentally has been completely shattered and no reliance can be placed on the evidence of PW-11 Bhojling. Moreover, PW-1 Suresh was also not questioned regarding any disclosure being made by PW-1 Suresh to PW-11 Bhojling.

10. Prosecution has examined PW-6 Dr. Manoj Bansode, who has performed the postmortem examination. According to PW-6 Dr. Bansode, the injuries sustained by Mangal were possible if the hammer falls from a height of about 8 to 10 ft. on a person who was sleeping on the ground.

11. The accused in his defence has examined DW-1 Pandurang, who deposes that on the day of the incident he had heard the alarm raised by PW-1 Suresh and therefore had gone to the house of the Appellant. On entering the house he had noticed deceased Mangal sleeping near the heap of grain

bags and besides Mangal, he noticed one big hammer lying there. According to him, the height of the gunny bags was about 8 to 10 ft. He further deposes that PW-1 Suresh had informed him that the hammer which had been kept on the gunny bags had accidentally fallen on the head of Mangal and Mangal had sustained the injuries.

12. On the basis of this evidence, the learned Counsel for the Appellant has urged before us that the defence of the Appellant has been probablized that the hammer which was kept on the gunny bags fell accidentally on the head of deceased Mangal, who was sleeping below the gunny bags and thus, had sustained the injuries. The learned Counsel for the Appellant has further invited our attention to the evidence of PW-5 Anil, a witness to the spot panchnama, who admits in the cross-examination that when he inquired from PW-1 Suresh, Suresh had disclosed about accidental death of Mangal. He also deposes that he had noticed the gunny bags of grain which were stacked one over the other. He further deposes that the Police had seized the hammer which was lying on the scene of the incident.

13. PW-1 Suresh has admitted in the cross-examination that at the time of the incident, some gunny bags were placed adjacent to the wall in his house and the gunny bags had been placed one on top of the other. Curiously, PW-1 Suresh was not asked if the gunny bags were kept in the same room in which Mangal was sleeping. PW-1 Suresh has denied in his cross-examination that deceased Mangal had sustained the injuries on account of the accidental fall of the hammer. According to PW-1 Suresh, the Appellant had fled from the scene of the incident carrying the hammer. PW-5 Anil has given certain admissions in the cross-examination which are contradictory to the recitals of the spot panchnama. The spot panchnama does not reflect that gunny bags were found in the same room in which deceased Mangal was sleeping. PW-1 Suresh had also not been questioned about any information given by him to PW-5 Anil. The admissions in the cross-examination given by PW-5 Anil, which are contradictory to the recitals of the spot panchnama, therefore, cannot be made use of by the Appellant. DW-1 Pandurang has also deposed about PW-1 Suresh informing him that Mangal had

died due to accidental fall of the hammer. PW-1 Suresh has not admitted to have conveyed any information to DW-1 Pandurang. Moreover, statement of DW-1 Pandurang was not recorded during investigation. The disclosure made by him were obviously being made for the first time in Court.

We thus find that there is no evidence whatsoever that gunny bags had been placed in the same room in which Mangal was sleeping and that a hammer had been placed on top of the gunny bags and that the hammer had fallen on the head of deceased Mangal and Mangal had sustained the injuries. Even the Appellant in his statement under Section 313 of the Code of Criminal Procedure does not state that Mangal had sustained the injuries accidentally. A hammer has been recovered at the behest of the Appellant and though there is no report of the Chemical Analyzer, the fact of the recovery has been established. Moreover, PW-1 Suresh has admitted the hammer to be the same hammer used by the Appellant for causing injuries to deceased Mangal. Thus, in our opinion, in the light of the aforesaid evidence, prosecution has proved the offence against the Appellant

beyond reasonable doubt and no interference is called for in the present Appeal.

14. The Appeal therefore being without merit is dismissed confirming the conviction and sentence of the Appellant.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (P.V. HARDAS, J.)