

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1139 OF 2009

Achyut @ Ashok Tukaram Lokare	]	
Age : 42 Years, Occ.: Agriculture,	]	 Appellant /
R/at : Yerawale, Tal. Karad, Dist. Satara	]	(Org. Accused)

Versus

The State of Maharashtra,	]	
Thru' Karad Taluka Police Station, Satara	]	 Respondent

Dr. Yug Mohit Chaudhary for the Appellant.

Mrs. Sangeeta Shinde, A.P.P., for the Respondent-State.

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

JUDGMENT RESERVED ON : 11TH MARCH, 2015.

JUDGMENT PRONOUNCED ON : 17TH MARCH, 2015.

JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. The Appellant, who stands convicted for the offence punishable under Sections 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.3,000/-, in default to suffer R.I. for one month, by the Additional Sessions Judge, Karad, Dist. Satara, by his Judgment dated 30th November, 2009 in Sessions Case No.48 of 2006, by this Appeal challenges his conviction and sentence.

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

PW-4 Prakash Lokare, his brother Abasaheb, since deceased, and the Appellant are the neighbours. Their lands are also nearby. They are from the same brotherhood. Abasaheb was having bore well in his land bearing Survey No.418. Appellant was demanding water to his land from the said bore well. On that count, on 17th April, 2006, at about 10 pm to 10:30 pm, some hot exchange of words took place between them and in the said incident, Appellant assaulted Abasaheb with an *axe* on his head and right thigh. The incident was witnessed by PW-4 Prakash, PW-6 Pramod Thorat and PW-7 Anandrao Lokare. They took injured Abasaheb to Krishna Hospital. However, Doctor declared Abasaheb to be dead. Hence, PW-4 Prakash immediately approached to Karad City Police Station and there he lodged complaint against the Appellant.

3. On his complaint (Exhibit-18), C.R. No.136 of 2006 came to be registered against the Appellant at 1:35 am. In the morning, in between 8 am to 9 am, API Chavan made Spot Panchanama (Exhibit-12) in the presence of the Panch PW-1 Atmaram Lokare. Thereafter, in between 10 am to 11:15 am, PW-10 ASI Tanaji Polekar made Inquest Panchanama (Exhibit-14) of the dead body in the presence of Panch PW-2 Mansing

Lokare. The dead body was then referred for postmortem examination. PW-11 Dr. Deepak Mane, the Autopsy Surgeon, conducted the postmortem examination and issued Postmortem Notes (Exhibit-31). The clothes on the dead body were collected by Police Constable Chavan and he produced the same before PW-10 ASI Polekar. He seized them under Panchanama (Exhibit-16) in the presence of Panch PW-3 Uttam Patil. The said Panchanama was made in between 2 pm to 2:30 pm.

4. The Appellant came to be arrested on the very day itself by PW-8 Police Constable Satyawant Basawant at the construction site of his new house near Village Yeravale. During police custody, at the behest of the Appellant, on 20th April, 2006, the blood stained axe came to be seized under Panchanama (Exhibit-21) in the presence of the Panch PW-5 Vasantrao Patil. There were dry blood stains on the said axe. The blood stained clothes of the Appellant, which were seized at the time of his arrest, and the blood stained axe, recovered at his instance, were sent to Chemical Analyzer on 25th April, 2006 at the hands of the carrier PW-9 Police Constable Chandrakant Patil. The C.A. Report of the same is produced at Exhibit-40A. Meanwhile, API Chavan, who was carrying out investigation, drew the sketch of the spot of incident (Exhibit-40) and upon completion of investigation, PW-13 PI Mahadeo Gavade submitted Charge-Sheet in the Court against the Appellant.

5. On the case being committed to the Sessions Court, the Trial Court framed charge against the Appellant vide Exhibit-7. The Appellant abjured the guilt and claimed trial, raising the defence of denial and false implication.

6. In support of its case, the Prosecution examined in all 14 witnesses. On appreciation of their evidence, the Trial Court held the guilt of the Appellant to be proved beyond reasonable doubt and convicted and sentenced him, as stated above.

7. In this Appeal, we have heard learned Counsel for the Appellant and learned A.P.P. for the Respondent-State and, in order to effectively deal with the submissions advanced before us, it would be useful to refer to the evidence of the prosecution witnesses.

8. This case stands on the evidence of three eye witnesses, namely, PW-4 Prakash Lokare, PW-6 Pramod Thorat and PW-7 Anandrao Lokare. The Prosecution is also relying on the evidence of PW-11 Dr. Deepak Mane, who has conducted the postmortem on the dead body of Abasaheb, to show that his death was homicidal in nature. Lastly, Prosecution has placed reliance on the evidence relating to the recovery of the blood stained clothes and the axe at the instance of the Appellant.

To some extent, the Prosecution has also placed reliance on the aspect of motive.

9. Now coming first to the homicidal death of deceased, there is evidence of PW-11 Dr. Deepak Mane, who, at the relevant time, was attached to the Cottage Hospital, Karad. He has conducted the postmortem on the dead body of Abasaheb on 18th April, 2006, in between 1 pm to 2 pm. On his examination, he found the following external injuries on the dead body of Abasaheb :-

(1) Incised wound with clean cut even margins with underlying bone also seen cut size 12 cm x 2 cm into bone deep situated at left side of the head at fronto parietal region, anterior end of wound is situated 4 cm above medial end of left eyebrow / Posterior end is situated 1.4 cm above upper incision of left ear. Wound directed from before backward and outwards, colour reddish.

(2) Injury No.2 : Incised wound with clean cut even margins placed transversely having size of 6 cm x 2.5 x muscle deep, for outer half and bone deep at medial half, situated on front of right thigh, 12.5 cm below right anterior; superior iliac spine, colour reddish.

10. On internal examination, he found the following injuries on the dead body of Abasaheb :-

- (1) *Scalp Injury :- 1 injury incised wound of 12 x 2 cm x bone deep at left fronto parietal region.*
- (2) *Skull Injury :- cut of skull bone, semi circular in shape circumference 25 cm diameter 11 cm. There is fracture of left frontal sinus and also right orbital plate.*
- (3) *There is cut in the dura matter of size 11 cm with cut in brain tissue of frontal lobe.*
- (4) *Scanty sub dural hemorrhagic at mid portion of both cerebral hemisphere.*
- (5) *Diffuse sub arachnoid hemorrhage at mid portion of both cerebral hemisphere.*

11. All injuries were antemortem in nature. According to him, the cause of death was *“death due to sub dural haemorrhage and sub arachnoid haemorrhages due to head injury”*. He has issued Postmortem Notes (Exhibit-31) in accordance therewith.

12. PW-11 Dr. Deepak Mane has opined that injury No.1 was corresponding to injury on the scalp, skull and brain, as mentioned above, and the said injury was sufficient, along with the corresponding internal injuries, to cause the death and the death was as a result of the said injury. He has further opined that the head injury and thigh injury would be possible by assault from front side. According to him, both the injuries are possible due to assault by weapon like axe. In his cross-examination, it is brought on record that the assault by the axe must have been with force, considering the nature of the injuries. His evidence, thus, goes to prove the homicidal nature of the death of Abasaheb as a result of the injuries sustained in the incident.

13. As regards the evidence of the first witness examined by the Prosecution, namely, PW-4 Prakash, the elder brother of deceased Abasaheb, he has deposed about his family having the irrigated land bearing Survey No.418 of 3½ acres, in which there was a bore well. The water of the said bore well was given to their uncle on payment. The Appellant belongs to their brotherhood and his land is also situate nearby on the north side. He was also demanding the water of the bore well to deceased in the summer season for his land. However, due to the shortage of water in the bore well of the deceased, he refused to give such water to the Appellant. Therefore, according to evidence of PW-4 Prakash, Appellant was angry against his family, especially, against deceased.

14. As regards the incident, he has deposed that on 17th April, 2006, due to the tremors of earthquake at about 10 to 10:30 pm, he and his family members came out of the house. He saw deceased Abasaheb standing in front of the cattle shed under the light of electric pole. He further saw that Appellant came from western side, along with the axe in his hand, towards Abasaheb. He heard the Appellant insisting on deceased for providing bore well water to his land. However, deceased said to him that it was his wish whether to provide bore well water to him or not. Hence, Appellant got angry and assaulted deceased on his head

with axe. He further assaulted the deceased on his right thigh. As a result, deceased fell down on the ground with bleeding injuries. Therefore, PW-4 Prakash rushed there along with the other witnesses, namely, PW-6 Pramod Thorat, PW-7 Anandrao Lokare, Sagar Lokare and Raghunath Lokare. They brought the deceased in rickshaw to Krishna Hospital. However, Doctor declared him dead on arrival. Hence, according to him, he immediately went to City Police Station and lodged the complaint (Exhibit-18). His complaint was recorded at about 1:30 am in the night. On the next day, he showed the spot of incident to the Police. The dead body of the deceased was kept in the hospital itself during night. The Inquest Panchanama (Exhibit-14) was also made, therefore, on the next day.

15. There is similar evidence of PW-6 Pramod Thorat. According to him also, due to the tremors, he had come out of the house along with his family members. He was standing in front of the door on the road along with PW-4 Prakash Lokare, PW-7 Anandrao Lokare, Sagar Lokare and Raghunath Lokare. He also saw the Appellant coming with an axe from west side towards deceased, who was standing in front of the cattle shed. He heard Appellant asking the deceased why he was not providing bore well water to him, as he was providing water to others. Deceased told him that it was his wish whether to provide the water to the Appellant or not. Hence, Appellant got angry and assaulted deceased with axe on his head

and right thigh. He has further deposed that, then all of them rushed to the deceased. The Appellant, however, ran away from the spot with the axe. Then they took the deceased in the rickshaw of Tanaji Lokare to Krishna Hospital. However, there injured was declared dead. The Police has recorded his statement on that day itself.

16. Evidence of PW-7 Anandrao Lokare is corroborating to the evidence of PW-4 Prakash and PW-6 Pramod. He has also deposed about coming out of the house at about 10 pm due to the tremors and, at that time, he saw deceased Abasaheb standing in front of the cattle shed and the Appellant coming there and confronting him about providing bore well water to his land. When deceased Abasaheb told him that it is his wish to whom he has to provide the water and how Appellant can ask him about it, the Appellant got angry and assaulted deceased with an axe on his head as well as on his right thigh. As a result, deceased fell down. The Appellant ran away along with the axe. Then, he himself, PW-4 Prakash, PW-6 Pramod, Raghunath and Sagar Lokare rushed towards deceased, took him in rickshaw to the hospital; where he was declared dead. His statement also came to be recorded on that day itself by the Police.

17. Thus, there is consistent evidence of three eye witnesses corroborating and supplementing each other in all the details. It is further

getting support and corroboration from the complaint (Exhibit-18), which was lodged immediately at that night. The offence is registered in the night at 1:30 am. In the complaint also, all these details of the incident and the name of the Appellant are appearing. The Appellant is also arrested immediately on the next day. As per evidence of PW-5 Panch Vasantrao Patil, at his instance, subsequently, the blood stained axe also came to be seized under Recovery Panchanama under Section 27 of the Indian Evidence Act.

18. This prosecution evidence is challenged by learned Counsel for the Appellant on three-four grounds.

19. In the first place, it is submitted that the sketch of the spot of incident (Exhibit-40) goes to prove that the house of PW-4 Prakash was facing towards the north side. As admitted by him in his cross-examination, the incident had taken place towards south-west side of the cattle shed, which was adjacent to his house. As admitted by PW-4 Prashant and PW-6 Pramod, they were standing in front of the house of PW-4 Prakash. It is urged that, if the house was facing towards north side and the incident had taken place on southern side, that too at the distance of about 35 ft. to 40 ft., then their evidence that they saw the incident cannot be believed upon.

20. The sketch of the spot of incident (Exhibit-40) goes to show that there was a 10 ft. road towards south side of the house of PW-4 Prakash and PW-6 Pramod. To the west side of their house, there is cattle shed, after that, on south-west side, there is one Babhul tree, near which the blood stains were found. There is also one electric pole nearby, as deposed by these witnesses. As deposed by these witnesses, the distance from the place where they were standing and the spot of incident was about 35 ft. to 40 ft.

21. In cross-examination, PW-4 Prakash has denied that the 10 ft. road is behind their house. PW-1 Atmaram Lokare, the Panch Witness to the Spot Panchanama, has also in his cross-examination denied that the front main door of PW-4 Prakash's house was to the north side. He has stated that mention to that effect in the Spot Panchanama (Exhibit-12) is not correct. As per evidence of PW-4 Prakash also, his house is adjacent to the road. PW-6 Pramod has stated that they were standing in front of the door on that road. He has further stated that the facing of the cattle shed is also to the south side.

22. Thus, the situation at the spot, as shown in the sketch (Exhibit-40) and the Spot Panchanama (Exhibit-12), is not admitted to be correct by these witnesses. According to them, their house and cattle shed are

facing towards south side and in front of their houses, there was 10 ft. road and they were standing adjacent to that road. Therefore, they were in a position to witness the incident, which took place on southern side.

23. In our considered opinion, the contemporaneous documents, like, the Spot Panchanama (Exhibit-12) and the sketch (Exhibit-40), are relied upon and the position, as shown in the sketch and the Spot Panchanama, is accepted to be correct and it is held that PW-4 Prakash and PW-6 Pramod were standing on north side of the house and the incident had taken place on south side, even then, absolutely no evidence is brought on record to show that the spot of incident was not visible from the place where they were standing. No such suggestion, even for the sake of it, is given to any of these witnesses that from the spot where they were standing, they could not see the incident as the view was obstructed by either the cattle shed or by their house. In such situation, there is no hurdle in accepting their testimony of having actually witnessed the incident.

24. Moreover, as regards PW-7 Anandrao Lokare, the Spot Panchanama (Exhibit-12) and the sketch (Exhibit-40), both, go to prove that his house was on southern side of the road and, therefore, as he was standing in front of his house, he was very much in a position to see the

entire incident happening, as incident had also taken place on southern side of the road. Therefore, his sole testimony can alone also be sufficient to prove the incident, even if, for the sake of argument, the evidence of PW-4 Prakash and PW-6 Pramod is excluded from consideration.

25. The Prosecution has also brought on record evidence to show that there was sufficient light of electricity pole at the spot of incident. There was also light illuminating in cattle shed and, therefore, when the Appellant was very much known to these witnesses, as they were from the same neighbourhood and brotherhood, there was no question about the identification of the Appellant. No such suggestion is also put up to them.

26. The next submission of learned Counsel for the Appellant is that as per the evidence of PW-11 Dr. Mane, the injuries found on the deceased could not be caused from a distance of 2 ft. There has to be minimum distance of 3 ft. between the assailant and the injured. In the present case, it is submitted that PW-6 Pramod has stated in his cross-examination that there was distance of only 1 ft. or 2 ft. between Appellant and deceased at the time of incident. Therefore, according to learned Counsel for the Appellant, the medical evidence belies the oral account of the eye witnesses.

27. However, we are unable to accept this submission, because the legal position is well settled that medical evidence cannot override or prevail over the ocular account of the eye witnesses. Admittedly, PW-6 Pramod has seen the incident from the distance and, therefore, he has given the distance between the Appellant and the deceased approximately. Merely on the basis of such stray statement in his evidence, the ocular account, which is consistent of all the three eye witnesses, cannot be disbelieved.

28. Learned Counsel for the Appellant has further submitted that the Prosecution has failed to prove the motive for Appellant to assault the deceased. In this respect, he has urged that the land of the Appellant was not adjacent to the land of the deceased. Hence, there was no question of Appellant asking the deceased to provide water to his land from the bore well of the land of the deceased. Secondly, he has submitted that the Appellant, in his statement recorded under Section 313 of the Cr.P.C., has produced the receipt of the purchase of the electric motor, 7/12 Extract of his land as also the receipt of the M.S.E.B. Deposit. According to him, if Appellant was having his own electric motor, there was no need for him to ask for water.

29. Learned Counsel for the Appellant has relied upon ***Bapura Annaji Khond Vs. Emperor, AIR 1936 Nagpur 160***, to submit that the innocence

of the Accused is presumed. Therefore, when Accused gives a reasonable explanation, which may be true, then, even though the Judge or the Jury, as the case may be, is not convinced that it is true, he is entitled to an acquittal.

30. In our considered opinion, once the ocular account of the eye witnesses is believed, the aspect of motive pales into insignificance. Whether there was motive for the Appellant to assault the deceased or not becomes irrelevant once we believe the evidence of the eye witnesses. Moreover, mere purchase of the electric motor by the Appellant, which was also just two months before the incident, does not rule out his requirement of water and his grudge against deceased.

31. Learned Counsel for the Appellant has then pointed to the evidence of PW-10 ASI Polekar, who was on duty at Krishna Hospital when deceased was brought there. He has submitted that these witnesses have not disclosed anything about the incident to PW-10 ASI Polekar. As admitted by him in his cross-examination, the relatives of the deceased did not disclose to him how the deceased had sustained the injuries. It is urged that there is no EPR Entry or Register produced to that effect. In our considered opinion, as the witnesses were occupied in providing treatment to the injured and immediately PW-4 Prakash had also gone to

the Police Station to lodge the complaint, there is possibility that the information was not given to PW-10 ASI Polekar. In our opinion, in view of the F.I.R., which is lodged in the same night giving all the details of the incident, and offence itself being registered within few hours of the incident, there is no scope for accepting that the Appellant is implicated as an after-thought.

32. The Prosecution has further relied upon the evidence relating to recovery of the blood stained clothes on the person of the Appellant, which came to be seized, and also the evidence of the Panch Witness PW-5 Vasantrao Patil to prove that at the instance of the Appellant, the blood stained axe came to be seized under Panchanama (Exhibit-21). The Prosecution has also relied upon the C.A. Report (Exhibit-40A). However, in the absence of evidence proving that those clothes and the blood stained axe were seized and sealed with wax, we are not relying upon the said evidence.

33. The fact, however, remains that even if the said evidence is left out of consideration, the eye witness account of the incident in the present case is convincing, cogent, reliable and inspiring confidence in the judicial mind. It goes to prove the guilt of the Appellant beyond reasonable doubt. The Appeal, therefore, holds no merit and, hence, deserves to be dismissed.

34. Accordingly, Criminal Appeal No.1139 of 2009 is dismissed, confirming the conviction and sentence of the Appellant-Achyut @ Ashok Tukaram Lokare, for the offence punishable under Section 302 of the IPC.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]