

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.640 OF 2012

Banti @ Vikas s/o Devidas Gaisamudre,
Age : 24 years, Occupation : Education,
R/o Police Colony, Parli,
Tq.Parli Vaijanath, District Beed.

..APPELLANT

-Versus-

The State of Maharashtra.
(Copy to be served on
Government Pleader, High Court
of Bombay, Bench at Aurangabad.)

..RESPONDENT

.....

Shri B.M.Wavalkar and Shri M.B.Sandanshiv, Advocates for the Appellant.

Shri S.I.Salgare, Assistant Public Prosecutor, for the Respondent/ State.

.....

CORAM : R.M.BORDE & K.L.WADANE, JJ.

Dated : 13th April, 2016.

Judgment (Per K.L.Wadane, J.):

1 The present Appeal is preferred by the Appellant/ Accused against the judgment and order dated 21.09.2012 passed by the learned Additional Sessions Judge, Majalgaon, District Beed in Sessions Case No.31/2010 by which, the learned Additional Sessions Judge has convicted the Appellant for the offence punishable under Section 302 of

the Indian and sentenced him to suffer rigorous imprisonment for life along with fine of Rs.1,000/- (Rupees One Thousand).

2 The brief facts of the case may be stated as follows:-

On 14.04.2010, the Informant (Suryakant Vishwanath Autade), resident of Dharur, lodged the complaint to the Police Station, Dharur stating that on 14.04.2010 at about 09:00 am, he along with his deceased son Aakash opened their shop "Hari Om Plywood" on Kaij-Dharur road. On that day, the Informant purchased cotton. At about 4:00 pm, the Informant was in need of money, therefore, he sent his son Aakash to their house to bring cash. Accordingly, Aakash went to house and brought Rs.2 lac cash and the same was kept in the drawer of the table. Thereafter, the Informant went to Guru Raghvendra Ginning and Pressing Mill on Aadas Road, Dharur on his motorcycle and returned to his shop at about 5:15 pm. When he reached near his shop and was parking his motorcycle, at that time he saw that the accused was assaulting his son Aakash by knife on his chest. Due to assault, his son Aakash fell down and rolled from the staircase. The accused was trying to run away, therefore, the Informant tried to caught hold the accused. However, the accused threatened the Informant by showing the knife. Subsequently, the accused fled away on the motorcycle.

3 The witnesses Prakash Kadam, Sachin Gaikwad, Dattatraya Gulve, Sunil Gavli and Chandrakant Autade gathered at the spot. The deceased was lying in a pool of blood. Therefore, the Informant had taken him to the Rural Hospital at Dharur. The Doctor at the hospital examined the deceased and declared him to be dead. Clothes on the person of the Informant, which were stained with blood were seized by the Police under Panchanama (Exhibit-45). Similarly, the Police have conducted the inquest panchanama (Exhibit-39). The postmortem on the dead body of the deceased was carried by Dr.Usha Bangar (PW-7). After receipt of information, the Investigating Officer Mr.V.M.Awhale (PW-9) registered the offence as Crime No.19/2010 and he carried out the investigation. During the investigation, Mr. V.M.Awhale (PW-9) visited the spot on 15.04.2010 and prepared the Spot Panchanama (Exhibit-42). The accused was arrested on 17.04.2010. On 20.04.2010, the accused made a statement that he will produce the knife and blood stained clothes as per memorandum (Exhibit-49). Thereafter, the accused led the policy party and panch witnesses to village Tarnali in a Government vehicle. As per the directions and instructions of the accused, the Police stopped the vehicle in front of the house of one Vijay Sarwade. The accused discovered the knife and blood stained clothes kept in nylon bag. These articles were

seized under Panchanama Exhibit-50. On 03.05.2010, Mr.Awhale (PW-9) forwarded the seized articles for chemical analysis. After as usual investigation, the charge sheet came to be filed against the accused.

4 In order to establish the case of the prosecution and to prove the charges levelled against the Appellant/ Accused, the prosecution has examined 10 witnesses, namely :-

PW-1 : Vishal Bhagwat Shirsath, Panch to prove the Spot Panchanama.

PW-2 : Shivaji Namdeo Kurwade, Panch to prove the Inquest Panchanama.

PW-3 : Digambar Pandurang Gaikwad, Panch to prove the seizure of motorcycle.

PW-4 : Rameshwar Uddhavrao Shinde, Panch to prove the recovery of knife and clothes at the instance of the accused.

PW-5 : Suryakant Vishwanath Autade, Informant and Eyewitness, father of deceased.

PW-6 : Dattatraya Gulve, Eytwitness.

PW-7 : Dr.Usha Bangar, to prove homicidal death of Aakash.

PW-8 : Uddhav Laxman Sarvade, to prove extra-judicial confession

given by the accused.

PW-9 : V.M.Awhale, Investigating Officer, who carried out substantial investigation.

PW-10 : Nandkumar Patil, Investigating Officer, who filed the charge sheet.

5 The statement of the accused under Section 313 of the Code of Criminal Procedure is recorded and the defence of the accused is of total denial and that he is falsely implicated on suspicion and on the say of others. Considering the evidence on record and after hearing both the sides, the learned Additional Sessions Judge has convicted the Appellant/ Accused as referred earlier.

6 We have heard the arguments of Mr.Wavalkar, learned Advocate appearing for the Appellant and Mr.Salgare, learned Assistant Public Prosecutor appearing for the Respondent/ State.

7 During the course of argument, Shri Wavalkar has submitted that the evidence adduced on behalf of the prosecution is not sufficient to bring home the guilt of the accused. He further argued that the Informant and other witnesses were not knowing the accused, therefore, there was

no proper identification of the accused, who alleged to have been committed offence of murder.

8 As against this, Mr.Salgare, learned APP, by referring the evidence of eyewitnesses PW-5 Suryakant Autade (Informant) and PW-6 Dattatraya Gulve, has submitted that the evidence of these two witnesses is very much clear and sufficient to establish the guilt of the accused. He further argued that apart from the direct evidence, there are some incriminating circumstances appearing from the record i.e. blood of the deceased was found on the shirt of the accused which he has produced before the Police as per the panchanama (Exhibit-50).

9 With the help of the learned Advocates appearing for the respective sides, we have gone through the entire evidence on record. Considering the arguments advanced by both sides and the evidence on record, the following points arise for our consideration:-

- (a) Whether, the prosecution has proved that the deceased Aakash met with homicidal death? YES.
- (b) Whether, the prosecution has further proved that the appellant/ accused committed the offence of murder of the deceased Aakash on 14.04.2010 at about 5:15 pm? YES.

(c) What order? Appeal is dismissed.

REASONS:-

10 Point No.1:- In order to establish the homicidal death of the deceased, the prosecution has mainly relied upon the evidence of PW-7 Dr.Usha Bangar who deposed that on 14.04.2010 she carried out the postmortem on the dead body of the deceased Aakash and found the following external injuries:-

- “(1) Deep stab injury below Xiphisternum of length 3 cms, width 6 cms, depth 10 cms.
- (2) Stab injury just above left nipple in between 4th and 5th intercastal space directing medial to lateral side. Dimension length 5 cms, width 2 cms, depth 5 cms.
- (3) # 3rd rib on lateral side.
- (4) Small abrasion below left nipple, 1 x 1 cms.
- (5) Abrasion on left first finger, 3 x 1 cms.”

11 On internal examination, Dr.Usha Bangar (PW-7) found laceration over middle border of left lung 5x3 cms, stab injury over interior border of heart to right ventricle 2x2 cms depth 2 cms, second stab injury over left atrium of length 1 cm, width 1 cm and depth 2 cm.

She further deposed that the stab injuries referred in the postmortem are possible by blow of article i.e. knife shown to her in the Court.

12 On perusal of the cross-examination of PW-7 Dr.Usha Bangar, it appears that it was suggested to her that if a person falls on the object having size of “Trishool”, injuries referred in Exhibit-56 can be possible. However, that suggestion has been denied by her. Such thing is highly impossible. Considering the location of the above mentioned injuries, it is impossible to have such injuries due to fall on Trishool. Looking to the oral evidence of Dr.Usha Bangar coupled with the contents of the postmortem report, the prosecution has proved the homicidal death of the deceased Aakash.

13 Point No.2 : PW-6 Dattatraya Gulve, who claimed and stated to be an independent witness, deposed before the Trial Court that on 14.04.2010 as usual he went to attend his duty in the Gas Agency at about 05:15 pm. When he was in the Gas Agency, he himself, Sachin Gaikwad, Prakash Kadam and Pramod Rodge heard the voice from the outside “मेलो रे”. Therefore, they saw that the accused was assaulting by knife on the chest of the deceased. This witness identified the accused in the Trial Court. This witness deposed that after the incident, when the

accused tried to run away, the Informant tried to restrain him. Since the accused pointed out the knife, the witnesses did not go near the accused.

14 From the evidence of PW-1 Vishal Shirsath coupled with the contents of the Spot Panchanama and Map, it reveals that the shop “Hari Om Plywood” of the deceased and the Informant PW-5 Suryakant Autade is situated on the first floor of the building, whereas the Gas Agency is situated on the ground floor in the same building. There is staircase to reach the shop of the Informant on the first floor. In the evidence, PW-6 Dattatraya Gulve has not stated anything as to how he saw the incident which took place on the first floor and this witness was sitting in the Gas Agency which is on the ground floor. Unless a person comes out from the Gas Agency and sees upward, he will not be able to see the incident. But, this position has not been clarified by this witness. On the contrary, during the cross-examination, PW-6 Dattatraya Gulve has admitted as follows:-

“It is true that where I sit in the agency, therefrom sitting of Suryakant Autade is not visible. Our agency is on ground floor and plywood shop of Suryakant Autade is on first floor.”

15 Thus, from the above admission it is clear that from the place where PW-6 Dattatraya Gulve was sitting, the place of incident is not visible and this witness has not stated in his evidence that after hearing

the voice he came out from the shop and saw the incident. Due to this material admission given by this witness, his oral testimony becomes doubtful.

16 Next important aspect is that PW-6 Dattatraya Gulve claimed to be eyewitness to the incident. He has not informed the incident to anybody till 17.04.2010 when his statement was recorded by the Police. The incident occurred on 14.04.2010 at about 05:15 pm and thus, this witness has kept mum for about four days. The Police had been to the spot to prepare the Spot Panchanama and the name of this witness was mentioned in the First Information Report, still the Investigating Officer has not recorded the statement of this witness immediately. Due to the aforesaid reasons, we are having doubt about the oral evidence of this witness. Therefore, his evidence does not inspire confidence.

17 PW-5 Suryakant Autade, father of deceased, deposed that on 14.04.2010 at about 09:00 am as per the routine, he himself and his son Aakash opened their shop "Hari Om Plywood". They dealt with the business till 04:00 pm. Due to shortage of money, at about 04:00 pm PW-5 Suryakant Autade sent his son Aakash on motorcycle to their house for bringing the amount of Rs.2 lac. At about 4:20 pm, his son brought Rs.2

lac and kept the same in the counter of the table. At about 4:30 pm, the Informant went to Guru Raghvendra Ginning and Pressing Mill situated at Aadas Road, Dharur where the cotton of one Mr.Nirgude was to weigh. Thereafter, when he returned to the shop at about 05:15 pm, he saw that the accused was inflicting the knife injury on the chest of his son Aakash.

18 Prakash Kadam, Sachin Gaikwad, Dattatraya Gulve, Sunil Gavli and Chandrakant Autade gathered on the spot. After stabbing his son, the accused tried to run away. The Informant made an attempt to catch the accused. However, the accused threatened the Informant by showing the knife and fled away on the motorcycle. The presence of this witness at his workplace along with his son Aakash, who is helping his business, is quite natural. Both of them are dealing with their business. This witness in clear words has deposed about the incident that he saw that that the accused was inflicting the knife injury on the chest of his son Aakash.

19 The oral evidence of PW-5 Suryakant Autade is supported with the medical evidence i.e. location of external injuries mentioned in the postmortem report. It is evident from the record that when this witness returned from the Ginning Mill and was about to park his

motorcycle, at that time, the incident occurred. Immediately after parking the motorcycle, this witness rushed towards injured son Aakash. It is true that the prosecution has not established the place where this witness has parked his vehicle. However, in the absence of effective cross-examination on this aspect, one has to presume that this witness has parked his vehicle at the place from where the incident is visible and accordingly, this witness has seen the incident. The presence of this witness is also supported by the other circumstances i.e. the appearance of blood of the deceased on his clothes. As per the case of the prosecution, after the incident, this witness had carried his injured son in the tempo to the Government Hospital at Dharur. In that process, the appearance of blood of the deceased on the clothes of this witness is but natural and accordingly, blood of the deceased i.e. "Blood Group O" detected on the shirt and pant of this witness. This is one of the circumstance to show that this witness had carried the deceased to the hospital.

20 The First Information Report is lodged promptly within two to three hours from the incident giving detail account of the incident. Therefore, there was no time for this witness to manipulate or to involve somebody falsely in this case. It was tried to be suggested on behalf of the Appellant that this witness was not knowing the accused. However, it is

brought on record that the father of the accused is from the village of this witness and the name of the accused is mentioned in the First Information Report itself. Therefore, unless and until this witness know the name of the accused, it was not possible for him to mention the name of accused in the First Information Report.

21 Another important aspect is about the detection of blood of the deceased on the clothes of the accused. According to the prosecution, the accused has made a statement leading to the discovery of knife and clothes in the presence of the Police and Panchas. To prove this fact, the prosecution has relied upon the evidence of Panch Witness PW-4 Rameshwar Shinde and the Investigating Officer PW-9 V.M.Awhale. On perusal of their evidence, it reveals that PW-4 Rameshwar Shinde is an independent witness and he is not related to the deceased or the informant in any manner. He deposed that on 20.04.2010, he was called at Police Station, Dharur when the accused was in the lock-up. In the presence of this witness, the accused made a statement in respect of his readiness to show and produce the knife and clothes which he has hidden and kept in tin shed at village Tarnali belonging to his friend Vijay Sarwade. Accordingly, the memorandum was recorded vide Exhibit 49. Thereafter, the accused, Panch witness and the Police proceeded in a jeep

to village Tarnali. The accused led the party to the house of Vijay Sarwade and discovered the blood stained shirt and knife hidden in nylon bag. These articles were seized under Panchanama Exhibit-50. It is further came in the evidence of PW-9 V.M.Awhale that the seized articles i.e. clothes of the deceased, clothes of the Informant, knife and shirt of the accused were sent for chemical analysis. The blood sample of the accused was taken and his blood group is "B". Blood group of the deceased is "O". On perusal of the report of the Chemical Analyzer, it reveals that blood of group "O" is detected on the shirt of the accused. This is the most important additional circumstance to connect the accused with the crime.

22 We have gone through the statement of the accused under Section 313 of the Code of Criminal Procedure. There is no explanation offered by the accused as to how the blood of different group appeared and detected on his shirt which he has produced before the Panchas. There is absolutely no explanation offered by the accused on this aspect. In fact, it was for the accused to explain the circumstances appearing in the evidence against him.

23 During the course of argument, the learned Advocate for the Appellant argued that there is no evidence of motive. Therefore, it cannot

be said that for the purpose of committing theft or robbery of the cash amount, the accused had committed murder of the deceased.

24 However, when there is direct evidence as to the manner in which the accused has committed offence, it is not necessary for the prosecution to prove the motive behind the crime. Sometimes the motive remains silent because one cannot read the mind of others. Therefore, if the direct evidence is available on record, then it is not necessary for the prosecution to establish the motive.

25 On perusal of the reasons recorded by the learned Trial Court, it appears that except the observations of the Trial Court relying upon the evidence of PW-6 Dattatraya Gulve, rest of the observations appear to be correct. The learned Additional Sessions Judge has rightly convicted the Appellant/ Accused. Therefore, the impugned judgment and order needs no interference. Consequently, this Appeal is dismissed.

(K.L.Wadane, J)

(R.M.Borde, J)