

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

**CRIMINAL APPEAL NO.219 OF 2009**

|                                          |   |                    |
|------------------------------------------|---|--------------------|
| Jagannath Laxman Pawar                   | ] |                    |
| Age about 37 years,                      | ] |                    |
| Occupation : Agriculturist,              | ] |                    |
| R/at Sanpane, Tal. Jaoli,                | ] | .... Appellant /   |
| Dist. Satara.                            | ] | (Org. Accused)     |
| <b><i>Versus</i></b>                     |   |                    |
| The State of Maharashtra                 | ] |                    |
| At the instance of Medha Police Station, | ] | .... Respondent /  |
| Tal. Jaoli, Dist. Satara.                | ] | (Org. Complainant) |

Mr. Sharad Bhosale, i/by Mr. Dilip Bodake, for  
the Appellant.

Mrs. A.S. Pai, A.P.P., for the Respondent-State.

**CORAM : SMT. V.K. TAHILRAMANI, ACTING C.J. &**  
**DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 7<sup>TH</sup> JANUARY, 2016.**

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

1. By this Appeal, the Appellant, who is Original Accused in Sessions Case No.6 of 2008, questions the legality and validity of the Judgment and Order dated 30<sup>th</sup> December 2008 of Additional Sessions Judge, Satara, thereby convicting him for the offence punishable under Section 302 of IPC and sentencing him to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default to suffer R.I. for six months. By the

impugned Judgment, he has also been convicted for the offence punishable under Sections 307 and 324 of IPC and sentenced to suffer R.I. for five years and to pay fine of Rs.5,000/-, in default to suffer R.I. for six months on the first count, and R.I. for one year and fine of Rs.1,000/-, in default to suffer R.I. for two months on the second count.

2. Factual matrix of the Appeal can be depicted as follows :-

PW-4 Tai Pawar had three sons by name Prakash, Vitthal and Jagannath, the present Appellant. Her eldest son Prakash was given in adoption to her father. Hence, he was already allotted half share in the property of her father. Remaining half share was inherited by her. The Appellant was demanding the said share in the property and on that count, he used to quarrel with his mother PW-4 Tai and his brothers. As the Appellant was not doing any work and was also not having cordial relations with his wife Aruna, she had left him with their sons and started residing at the house of her parents. Since last about eight months, Appellant was taking food in the house of one Anandrao Krishna Pisal and returning to the house of his mother for sleeping at night.

3. The incident that gave rise to the present case took place on 16<sup>th</sup> August 2007. On that day, at about 9 pm, PW-4 Tai and her daughter-in-

law PW-5 Sunita, wife of Vitthal, were sleeping in the house along with the children by name Nikhil, Vishal and PW-7 Amit. PW-8 Anusaya, wife of Prakash, had gone to latrine. At that time, Appellant returned to the house and started giving abuses as to why the tiles of the kitchen were washed. When PW-4 Tai told him not to give such abuses, Appellant got annoyed. He took the axe, which was kept on the wall, and gave the blow of axe by blunt side on the forehead of PW-4 Tai. When his mother Tai shouted, PW-5 Sunita got up. Appellant gave blow of axe on her head also. Then he assaulted PW-7 Amit with the same axe. As the other children, including deceased Vishal, son of Prakash, got up and started shouting, Appellant gave two blows of axe on the back of Vishal. The blow was so forceful that the axe was embedded in the back of Vishal. By that time, PW-8 Anusaya, mother of Vishal, on hearing the commotion, returned from the latrine and seeing her, the Appellant ran away from the spot. PW-8 Anusaya removed the axe from the back of Vishal. Then some persons from the village brought all the injured, including deceased Vishal, to Civil Hospital. There complaint of PW-4 Tai was recorded by PW-10 PI Shivaji Patil.

4. On her complaint (Exhibit-31), C.R. No.49 of 2007 came to be registered. During the course of investigation, PW-10 PI Shivaji Patil drew

the Scene of Offence Panchanama (Exhibit-25) and from the spot, he collected various blood stained articles, including the weapon of assault - the axe. He also drew the Inquest Panchanama (Exhibit-14) on the dead body of Vishal and sent it for postmortem examination. The Appellant was arrested on the next day and the clothes on his person came to be seized under Panchanama (Exhibit-48). All the seized muddemal articles were referred to Chemical Analyzer. The C.A. Reports are produced on record at Exhibits "20" to "23" and the Postmortem Report is produced at Exhibit-33. The statements of injured PW-5 Sunita and PW-7 Amit came to be recorded on 22<sup>nd</sup> October 2007, after they recovered from the injuries sustained in the incident. Further to completion of investigation, PW-10 PI Shivaji Patil filed Charge-Sheet in the Court against the Appellant on 12<sup>th</sup> November 2007.

5. On committal of the case to the Sessions Court, the Trial Court framed charge against the Appellant vide Exhibit-8. The Appellant pleaded not guilty and claimed to be tried, raising a specific plea of alibi.

6. In support of its case, the prosecution examined in all ten witnesses, as referred above, whereas, to prove his plea of alibi, the Appellant also examined three witnesses, including his wife Aruna. On

appreciation of their evidence, the Trial Court was pleased to hold the guilt of the Appellant to be proved beyond reasonable doubt on all the three counts and convicted and sentenced him, as aforesaid.

7. This Judgment of the Trial Court is challenged in the Appeal by learned counsel for the Appellant, whereas, supported by learned A.P.P. In our considered opinion, before adverting to the rival submissions advanced at bar by both of them, it would be useful to refer to the evidence on record.

8. The case of the prosecution stands on a very strong and clinching evidence of four eye-witnesses; out of which, three are injured in the same incident. PW-4 Tai, PW-5 Sunita and PW-7 Amit are the injured eye-witnesses. Their evidence is, more or less, of an identical nature. According to them, while they were sleeping in the house, the Appellant returned and started giving abuses on the count that the tiles of the floor were washed and wet. When PW-4 Tai confronted him and told him not to give abuses, as per their evidence, the Appellant took the axe and assaulted PW-4 Tai, his mother, by blunt side of the axe on her forehead. When she shouted for help, her daughter-in-law PW-5 Sunita got up. The Appellant assaulted her also with the blow of axe on her head on the left

side and also on her left leg. By that time, the children, who were sleeping near them, also got up. The Appellant assaulted the child witness PW-7 Amit with axe on his right arm and two blows of axe on the back of Vishal, the child of Prakash. The blows of the axe were so forceful that the axe got embedded in the back of Vishal. By that time, his mother PW-8 Anusaya, who had gone to latrine, on hearing commotion, rushed there and seeing her, the Appellant ran away from the spot. Then she removed the axe from the back of Vishal. However, Vishal succumbed to the injuries even before he could be taken to the hospital; whereas, these three injured witnesses were admitted in the Civil Hospital.

9. The evidence of all these four eye-witnesses is thoroughly consistent. Their presence at the spot is also natural one, being inmates of the house. Absolutely there is no reason as such for them to implicate the Appellant falsely, especially, considering the fact that PW-4 Tai is the mother of Appellant and other witnesses are also closely related to him. Even though there were disputes relating to the property between PW-4 Tai and the Appellant, it does not appeal to reason that PW-4 Tai will implicate her son falsely in such a ghastly incident of assault. Her complaint (Exhibit-31) is recorded immediately after the incident, in the hospital itself, in the presence of the Doctor and the complaint contains all

the details of the incident. Though all these four witnesses are cross-examined at length, nothing worthwhile is elicited in their cross-examination to disbelieve them in any way, except for some minor discrepancies, which are bound to occur in the evidence of any truthful witness. Instead of raising suspicion about their credibility, these discrepancies give an in-built guarantee that they are speaking the truth.

10. This evidence of the eye-witnesses and injured gets further support and corroboration from the medical evidence on record. PW-6 Dr. Rohan Raokhande has examined PW-4 Tai, when she was brought to the hospital in injured condition, on the mid-night of 17<sup>th</sup> August 2007 with the history of assault and he found following injuries on her person :-

- Contusion 4 x 4 cm, over frontal region of skull, 5 cm above left eyebrow.
- CLW over left eyebrow 3 cm x 1 cm x 0.5 cm, it was bleeding.
- Black eye left, upper lid was swollen, blackish discoloration, patient was unable to open left eye, vision intact.

11. According to PW-6 Dr. Rohan Raokhande, the injuries sustained by PW-4 Tai are possible with the blow of heavy and sharp object like axe

(Article No.9), which was shown to him in the Court. PW-4 Tai was admitted in the hospital from 17<sup>th</sup> August 2007 to 20<sup>th</sup> August 2007.

12. On the same night, he has also examined PW-7 Amit, who was brought there with the history of assault and he was referred by Dr. R.H. Somardi. On his examination, he found following injuries :-

- Incised wound 3 cm below lateral A. Picondyle, it was 5 cm x 1 cm x muscle deep, bleeding was present.

13. Amit was also admitted in the hospital during the period from 17<sup>th</sup> August 2007 to 20<sup>th</sup> August 2007. The case-papers of both PW-4 Tai and PW-7 Amit are produced on record, at Exhibit-56 and Exhibit-57 respectively.

14. PW-9 Dr. Anil Patil has examined PW-5 Sunita, when she was referred on the same night from Civil Hospital, Satara. He found following injuries on her person :-

- Sutured CLW over left side of scalp, straight with sharp edges, 8 cm long, in the temporal parietal region.

- Sutured CLW over right knee, with sharp edges, 10 cm long.

15. Her C.T. Scan showed left temporal depressed fracture with subdural hematoma with underlined hemorrhagic contusion. Hence, emergency surgery was performed. She was admitted in the hospital till 30<sup>th</sup> August 2007. Her case-papers are produced on record at Exhibit-42, which reveal that the history given was of assault by the axe.

16. PW-6 Dr. Rohan Raokhande has conducted postmortem examination on the dead body of Vishal on the next day, i.e. 17<sup>th</sup> August 2007, and found following external injuries :-

- Oblique sutured wound of 30 cm long extending from T-8 vertebra on left side and extending downwards laterally towards the left PSIS i.e. posterior superior iliac spine.
- Incised wound, elliptical in shape, below the left rib cage in posterior axillary line, 7 x 3 cm x abdominal organs exposed bowen intestine loops seen as well as palpable by fingers.

- Fracture 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> ribs on left side at angles of rib.

17. He also noticed following corresponding internal injuries :-

- Left side pleura ruptured in basal region.
- Larynx contains blood tinged for fluid.
- Left lung collapsed, pale.
- Addl. Remarks – Diaphragm on left side ruptured with stomach and ruptured spleen in thoracic cavity.

18. According to PW-6 Dr. Rohan Raokhande, the cause of the death was *“hypo volumanic shock due to diaphragmatic rupture on left side with splenic rupture with left lung collapsed”*. The Postmortem Report is produced at Exhibit-35 In his opinion, the cause of the injuries was the assault by sharp edged weapon like the axe.

19. Thus, the medical evidence in the case goes hand in hand with the ocular account of the incident and thereby fortifies the case of the prosecution completely and totally.

20. The prosecution is also relying in the case on other corroborating evidence like the recovery of the blood stained axe from the spot of incident, which was seized under Scene of Offence Panchanama (Exhibit-25), proved through the evidence of PW-1 Panch Nathu Pisal and PW-10 PI Shivaji Patil. The said axe, along with other article, seized from the spot, like the blood stained soil, was sent to C.A. and C.A. Report (Exhibit-20) proves the presence of human blood stains thereon of "A" group. The Seizure Panchanama of the clothes of the Appellant is proved through the evidence of the Panch PW-2 Chandrakant Belose and the Investigating Officer and it also proves the presence of human blood stains thereon. The Appellant has not at all offered any explanation for the same.

21. Thus, in the present case, the evidence on record is clinching to prove the involvement of the Appellant in the incident. Though the Appellant has raised the plea of alibi, surprisingly, not a single suggestion to that effect is given to any of the prosecution witnesses. This plea is raised for the first time in his statement recorded under Section 313 Cr.P.C. In support of this plea, the Appellant has examined three Defence Witnesses. Out of them, DW-3 Aruna is his wife. DW-2 Kishor Jadhav is his closed relative, being the husband of Aruna's sister, and DW-1 Bajrang Pawar is the adjoining land owner. The evidence of all these three

Defence Witnesses is quite vague and of a general nature. DW-1 Bajrang has deposed that the Appellant was, at the time of incident, in the house of his in-laws. However, in the cross-examination, he has admitted that he was not present with the Appellant on the date of incident, therefore, he does not know where Appellant was. DW-2 Kishor and DW-3 Aruna have deposed that on the date of incident, the Appellant had gone with Kishor on his truck and was at the garage of Javed Mistri till 8:30 pm. Therefore, their evidence also nowhere proves that at the time of incident, around 9 to 9:30 pm, the Appellant was not present in the house.

22. Their evidence thus does not substantiate the plea of alibi at all, as raised by the Appellant. It needs to be stated that the plea of alibi postulates the physical impossibilities of the presence of the Accused at the scene of offence by reason of his presence at some another place. Such a plea can succeed only if it is shown that the Accused was so far away at the relevant time that he could not be present at the place where the crime was committed. Such plea should be capable of meaning that having been regard to the time and place, where and when offence is committed, Accused could not have been present. The burden to prove the plea of alibi lies on the Accused and he has to discharge the said burden strictly by producing convincing and reliable evidence on record.

23. Here in the case, the evidence of the Defence Witnesses, as examined by the Appellant, do not rule out the possibility of his presence at the time of incident in his house, where the incident took place. At the most, the evidence of DW-2 Kishor and DW-3 Aruna explains his presence elsewhere upto 8:30 pm, whereas, the incident has taken place at about 9 pm. Therefore, there was every possibility of the Appellant being present in the home. Moreover, none of these witnesses, though closely related to the Appellant, have approached the Police earlier and gave their statements explaining the presence of the Appellant with them. It has, therefore, to be held that the Appellant has not only failed to prove his plea of alibi satisfactorily, but, by raising such false defence, he has added one more incriminating circumstance in the case put up by the prosecution against him.

24. The net result of the discussion is that the prosecution has succeeded in proving its case against the Appellant beyond all reasonable doubts.

25. At this stage, a faint attempt is made by learned counsel for the Appellant to advance the submission that the case of the Appellant can, at the most, fall under Section 304 Part II of IPC and not under Section 302

of IPC. It is urged that there was no motive on the part of the Appellant to kill his nephew Vishal. He had also not come to the spot with preparation of making the assault. The axe, with which the assault was made, was taken by him from the spot itself. Hence, in the heat of sudden quarrel, if he has assaulted the deceased, then, according to learned counsel for the Appellant, he cannot be held guilty for committing the murder of Vishal.

26. To substantiate his submission, learned counsel for the Appellant has relied upon ***Kaka @ Anil Namdeo Magar Vs. State of Maharashtra, 2009 ALL MR (Cri) 3597***. The facts of the said authority are, however, totally different from the facts of the present case. In that case, only single blow of knife was given to the victim in a sudden fight, in the heat of passion. Hence, it was held that the Appellant therein has not taken any undue advantage or acted in a cruel or unusual manner. Therefore, the benefit of Exception 4 to Section 300 of IPC was extended to him.

27. As against it, the facts of the present case are self-eloquent to prove that there was neither any sudden fight, nor Appellant has given a single blow. Conversely, he has injured not only the deceased, but three other witnesses. The assault on deceased was of two blows of axe and it was so forceful that the axe remained embedded in his back and deceased succumbed to those injuries instantly. It is also pertinent to note

that deceased Vishal was a child and was not at all the cause of any quarrel or incident. The evidence on record also does not show at all any quarrel or fight as such between Appellant and his mother PW-4 Tai. The injuries sustained by PW-5 Sunita were such that the Appellant is held guilty for attempting to commit her murder. Thus, when Appellant has inflicted multiple blows of sharp edged weapon like axe, that too on the vital parts of the body like head, and not on one person but on four persons, the benefit of Exception 4 to Section 300 of IPC can hardly be extended to him, as it is apparent that the Appellant has taken undue advantage and acted in a cruel and unusual manner. This plea is required to be rejected, therefore, outrightly.

28. Consequently, the Appeal stands dismissed, confirming the conviction and sentence of the Appellant, as recorded by the Trial Court. As the Appellant is in Jail, no further orders are necessary.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]    [ACTING CHIEF JUSTICE]**