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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 129 OF 2011

1. Renuka @ Balabai Nivrutti Bhise
2. Nivrutti Rama Bhise
(Both residing at Chawl No. 134 & 116,
Shivdarshan Parvati, Pune
Presently lodged in Yerwada Central Prison, Pune) ... Appellants
Vs.
The State of Maharashtra ... Respondent

Mr. D.G. Khamkar, Advocate for the appellants.
Mrs. U.V. Kejriwal, APP for the State.

CORAM: **SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**
DATE: **JULY 12, 2016**

JUDGMENT (Per Mrs. Mridula Bhatkar, J.)

This Appeal is directed against the judgment and order dated 24th December, 2010 passed by the learned Additional Sessions Judge, Pune thereby convicting appellants/accused for the offence of murder punishable under section 302 r/w. 34 of the Indian Penal Code and were sentenced to suffer imprisonment for life. The appellants/accused were also convicted under section 452 r/w. 34 of the Indian Penal Code and were sentenced to suffer R.I. for a period of three years.

2. It is the case of the prosecution that one Anil Shilimkar is a complainant. The incident of murder of Poonam Maharashtra Hindustani, aged 37 years, took place

on 25th December, 2005 near Shivdarshan at Parvati. The appellants/accused nos. 1 and 2 are husband and wife. The deceased and appellants are residing in the same building and are neighbours. They used to quarrel. Anil Shilimkar is cousin of Poonam. On 25th December, 2005 at about 12 noon he received Poonam's call informing that accused no. 1 Nivrutti and accused no. 2 Renuka were abusing her and thereafter in the evening she again called him and told that she had quarrel with Renuka and Nivrutti and asked him to come to Parvati Darshan police chowki. So, he went to police chowki. Deceased Poonam had lodged a report that accused Nivrutti threw a piece of tile on her and threatened her of life. Thereafter at 10 p.m. Anil received a phone call that Nivrutti and Renuka were fighting with her so he went there and he found that accused nos. 1 and 2 – Renuka and Nivrutti and accused Bala, who was juvenile were present at the house of Poonam. They were fighting. Two persons Mahesh and Tushar were also present there. Renuka was having koyta in her hand and when she was about to assault, Anil snatched koyta from her hands. The complainant tried to intervene in the assault. However, Nivrutti was armed with Koyta. Nivrutti and Renuka assaulted Poonam. They also fought with complainant and Mahesh. Poonam was badly injured. She came out of the house to escape and crossed the road towards other building, however, the accused caught hold of her and assaulted her. Poonam fell down near the chawl of

Shivdarshan. Thereafter the complainant, Mahesh and Tushar took her to Sasoon Hospital and there she was declared dead. The complainant was also injured. The complainant gave statement to the police on 26th December, 2005 and the offence was registered at C.R. No. 1143 of 2005 with Swargate Police Station. The postmortem was conducted by PW-10 Dr. Milind Sharad Wabale. The police drew spot panchnama, inquest panchnama and recorded statements of other witnesses. Thereafter the accused were arrested. At the instance of accused no. 2, his clothes and koyta were recovered on 29th December, 2005. The clothes of accused no. 1 was also seized on 30th December, 2005. After completion of the investigation, PW-15 Investigating officer Ms. Swati Vivek Desai sent the articles to Chemical Analyser. The report of Chemical Analyzer was received (Exhibits 108 and 109). Thereafter, she filed charge sheet in the Court of Judicial Magistrate on 24th March, 2006. After committal, the learned Sessions Judge, Pune framed charge in Sessions Case No. 391 of 2006 under sections 302, 324 and 452 r/w. 34 of the Indian Penal code against accused nos. 1 and 2. Accused no. 3 being a juvenile with conflict in law was not tried before the Sessions Judge and only appellants/accused nos. 1 and 2 were tried and convicted. Hence, this Appeal.

3. The learned counsel Mr. Khamkar read over the evidence of all the

witnesses. He argued that the case of accused nos. 1 and 2 stand on different footing. Accused no. 1, who is wife of accused no. 2, was not holding any weapon. The deceased died due to incised wounds and even as per the case of the prosecution, she did not assault Poonam by any weapon. The learned counsel submitted that the case of the prosecution stands entirely on the evidence of PW-1 Anil Pandurang Shilimbkar and PW-2 Tushar Vijay Hargude. However, their evidence is full of inconsistencies. He argued that the narration of the incident given by PW-1 Anil Shilimbkar is different than that of PW-2 Tushar Vijay Hargude. In the evidence of these two witnesses, they have referred one Mahesh, who was present at the time of incident. However, the prosecution did not examine Mahesh and this is material lacuna in the case of prosecution. He argued that there is variation in respect of assault in the evidence of these two witnesses. PW-1 Anil has described the weapon as sickle while PW-2 Tushar has described it as 'farshi'. He pointed out that there is difference in sickle and farshi. The police have seized sickle but not farshi. The presence of Tushar at the place of assault is very doubtful. In this evidence it is stated that on the night intervening 25th and 26th December, 2005 he went to Sasoon Hospital and as soon as the doctor declared Poonam dead, the witness fainted. However, he has stated that he was unconscious till 27th December and therefore, his statement was recorded on 27th December,

2005. The learned counsel argued that the evidence of the complainant is full of exaggeration. It is difficult to accept that he was unconscious for two days and there is delay in recording his statement, though he was available to the police and was an eye-witness. The learned counsel argued much on the point of shifting of the spot of actual assault and finding of the body of Poonam. He submitted that if at all Poonam was continuously assaulted with weapons by accused nos. 1 and 2 and juvenile accused Bala at her residence and thereafter as per the case of the prosecution, she ran towards other building of Shivdarshan by crossing the road, it is impossible for any person to run such a long distance when the person is injured in such a manner. He submitted that with such injuries and continuous assault if victim ran away from one place to other, then necessarily there should be blood trail between two spots. However, the police did not collect any evidence of soil soaked in blood or any photograph or any other evidence. So also, in the spot panchnama, i.e., Exhibit 32 the distance between the two spots is not mentioned and no such evidence of blood trail is mentioned. In support of this submissions, he relied on **Bhimappa Jinnappa Naganur vs. State of Karnataka, reported in (1993) SCC (Cri) 1053**. The learned counsel further submitted that the recovery of sickle (Article 28) from accused no. 2, which is approved by PW-6 Sagar Manik Lonkar is not reliable. He pointed out that two sickles were before the Court, i.e.,

Articles 28 and 13, however, witness Subhash could not identify which sickle was recovered in the discovery panchnama. He further submitted that PW-1 Anil had incised wound on his palm and therefore, he was sent for treatment to Dr. Kishor PW-11. He was injured, therefore, his evidence cannot be considered as reliable and his presence itself cannot be established because of the injury. In support of his submissions, he relied on the judgment of Division Bench of this Court in **Narayana Kanu Datavale & Ors., vs. State of Maharashtra, reported in 1997 Cri. L.J. 1788**. He argued that when Shilimkar was taken to doctor for treatment, he did not give the names of the assailants. The learned counsel submitted that the case was tried against three persons, i.e., accused no. 1/Renuka, accused no. 2/Nivrutti and accused no. 3/Rakesh. Renuka and Nivrutti, as per the case of the prosecution, were holding sickle. However, accused Bala, being a juvenile was tried separately. Renuka was not holding any weapon and as per the evidence of eye witnesses, she did not use sickle to mount assault on the deceased. Thus, the conviction against Nivrutti and more against Renuka is not sustainable.

4. Learned APP has supported the judgment of the conviction. She submitted that Poonam was brutally attacked. She died on the spot. There are two eye-witnesses and the evidence tendered by the prosecution is concrete and reliable.

5. We have gone through and considered the evidence of all the witnesses especially of the eye-witnesses PW-1 Anil and PW-2 Tushar carefully. On the point of motive, PW-1 Anil has stated that family of the accused and deceased Poonam were neighbours, however, they were hostile to each other. PW-1 Anil has deposed that there were quarrels between deceased and accused on 18th December, 2005 and then on 24th December, 2005 quarrel took place between them and abuses were given by accused nos. 1 and 2. PW-1 Anil was cousin of deceased Poonam and, therefore, she went on informing him about said quarrel, as she wanted support from her brother. PW-1 has stated that on 25th December, 2005 again there was phone call at 5.45 p.m. from Poonam and she informed that the accused were quarreling with her. So, they went to Swargate Police Station and lodged complaint against the accused. Thereafter again he received phone call, so he went to her house, Mahesh and Tushar were present. He entered the house of Poonam. When Renuka was about to assault Mahesh, PW-1 Anil snatched koyta from her hand. He said that there were scuffle between Renuka and Poonam and also between Mahesh and Nivrutti. Accused no. 3 was also there. Nivrutti was holding sickle. PW-1 tried to snatch sickle from Nivrutti, at that time he sustained injuries to his thumb. Later on he saw that Nivrutti was assaulting Poonam and she was shouting for help. Both the hands of Poonam were caught by Renuka and

juvenile accused Bala. Renuka was instigating Nivrutti to assault the witness. Nivrutti kicked him. He fell down and then he rushed to the police station on his motorcycle. He informed the incident to the police chowky and immediately along with constable he came to the house of Poonam at 11.15 p.m. However, nobody was there and when they came out towards the road, which was 25 to 30 ft. away, they noticed Poonam was lying in a pool of blood near the chawl of Shivdarshan, so they shifted her to Sasoon hospital and then she was declared dead. PW-1 was also treated in the hospital as he also sustained injuries.

6. PW-2 Tushar has deposed that on 25th December, 2005 they went to the house of Poonam at night. At that night, Nivrutti attacked him and told him to leave the house. But when Mahesh intervened, scuffling took place between Nivrutti and Mahesh. Then accused no. 3 also came there. Mahesh escaped and ran away from the spot. He suddenly heard cries of Poonam and when he went inside the room, he saw Nivrutti and his wife were assaulting Poonam with sickle. He saw blood was oozing out from the head of Poonam. Accused no. 1 Renuka was instigating accused no. 2 Nivrutti to assault Poonam. When PW-2 Tushar intervened, Renuka tried to assault him. Then juvenile accused Bala also started assaulting but Poonam escaped and ran out. But Bala chased her and caught hold

of her. Nivrutti again assaulted her. Nivrutti left the spot. PW-2 informed this to Poonam's brother Shashank who also arrived there. They all shifted her to hospital.

7. PW-14 Shashank Shilimkar, who is brother of Poonam, is also examined by the prosecution. He has deposed that he received phone call from Tushar about the assault on the night of 25th December, 2005. When he came near Shivdarshan, he noticed police and then he saw Poonam was lying in a pool of blood. Thereafter he, Mahesh and Tushar took her to hospital.

8. It is true that Tushar did not say anything about presence of Anil on the spot. Anil has stated that Mahesh and Tushar were there. Mahesh is not examined by the prosecution. However, considering the evidence of these two eye witnesses, no damage is done to the case of the prosecution though Mahesh has not stepped in the witness box. If movements of Anil and Tushar are considered, then it appears that Tushar might have first reached the spot and thereafter Anil came but the incident was going on inside as well as outside the room. There was scuffle between Mahesh and Nivrutti. Therefore, the attention of these two witnesses might have distracted to either Poonam or Nivrutti or Mahesh. However, Anil has deposed that he took sickle from the hands of Renuka. He saw Nivrutti assaulting

Poonam and when he was kicked by Nivrutti, he immediately left the spot and went to police station and came there with a constable. When he arrived there he found that everything was over. Thus, PW-1 Anil was absent from the spot when Poonam came out of the room and followed by Tushar. She starting running towards the road where she was again assaulted. Therefore, Tushar might not have noticed Anil at that time, as Tushar went inside and was constantly with Poonam.

9. Admittedly the incident was not at one place but at two different places and was going on for sometime. Tushar didn't say that sickle was used in the assault but he is continuously described the weapon as "farshi" (in vernacular language). From the record and evidence, Tushar was approximately 18 to 19 years old boy at that time. He called sickle as 'farshi' and was not knowing the difference between farshi and sickle. Thus, there is no material contradiction in the evidence of Tushar and Anil while describing weapon. The witnesses have specified the roles played by all the three accused. Renuka was assailant who instigated the accused to eliminate Poonam. She held the hands of Poonam to enable Nivrutti to assault her. We do not find any reason to disbelieve these witnesses. Much was argued in respect of spot panchnama. From the evidence it is clear that first spot of the

incident was in the house where Poonam was staying, i.e., 133/1 Shivdarshan and thereafter she came out and ran across the road but accused Bala and accused no. 1 Nivrutti followed her and then she fell down and again she was assaulted. Poonam was lying in between Flat No. 116B & 113/1 Shivdarshan.

9. In the case of **Bhimappa Jinnappa Naganpur** (*supra*), there was distance of 400 ft. between the spot of the assault and where the body of the deceased was found. The deceased had sustained 10 bleeding injuries on the head and face of the deceased and a blood would not be found along with route. However, no such blood trail was found and therefore the Supreme Court disbelieved the said eye-witness. In the present case, the deceased has received 38 injuries, out of which many were incised wounds. It appears that she ran a distance of 100 to 150 ft. It appears that the second spot was not very far from the first spot and a pool of blood found where the body of Poonam was lying and there were blood spots on some places though actually blood trail was not found. The evidence of two eye-witnesses cannot be disbelieved only for this reason. There might have been more blood spots at some places, however, they might have not been collected by the Investigating Agency for which these eye-witnesses cannot be discredited.

10. In the case of **Narayan Kanu Datavale** (*supra*), two injured persons were witnessed, however, the Division Bench rejected the testimony of those witnesses on the point of assault and held that there is no immutable rule of appreciation of evidence that the evidence of injured witnesses should be mechanically accepted as gospel truth for the injuries, however, the presence of witness only can be ensured but that cannot be guarantee of their credibility and truthfulness. On perusal of the said judgment, we found that the facts of the case are different. In the said judgment, the case of **Vijay Shankar Misra vs. State, reported in All L.J. 1316** is referred in which the Bench of Allahabad High Court held that if at all material infirmity and falsity is shown in the evidence of such witness, then it is to be rejected. In the present case, we do not find any material falsity and infirmity in the evidence of PW-1 and PW-2. So also we have not come across inter-se inconsistency in the evidence of these two witnesses. Therefore this ruling is not useful to the defence.

11. PW-5 Sachin Kaskar is examined on the point of recovery at the instance of accused no. 2. The recovery panchnama was drawn on 29th December, 2005. The Memorandum is marked Exhibit 51 and recovery is marked at Exhibit 52. It was recovered from the staff quarter no. 3 where one Kalpana Gaikwad was residing.

The learned counsel Mr. Khamkar has relied on the defence witness Vilas Khanzode. This witness was examined to demolish evidence of recovery of sickle at the instance of accused no. 2. He has stated that he has proved a letter (Exhibit 130) which he issued to Secretary of Society stating that Ashok Gaikwad is occupying quarter no. 4 and not 3 and therefore, the learned counsel argued that the recovery of sickle from quarter no. 3 is bogus. These submissions cannot be appreciated because the witness said that where accused no. 2 took them was a house of the relative of the accused and the lady who was present there disclosed her name as Kalpana Gaikwad. Either there may be some confusion in respect of quarter number 5 or 3. Learned APP has brought on record that the certificate issued by Vilas Kaskar is not an allotment letter of the house but it was a certificate issued by him. Thus, the prosecution has proved recovery.

12. PW-15 Swati Desai has deposed that Chemical Analyzer Report (Exhibit 108) human blood was found. The blood group of the deceased was 'A' and human blood was found in the sickle (Article 24). We rely on the evidence of Dr. Milind Wabale PW-10 who has performed postmortem on 26th December, 2005 and he found nearly 50 external injuries on the body. The cause of death was traumatic and haemorrhagic shock as a result of multiple chopped injuries. He also opined

that chop wounds are possible by any heavy and sharp weapon including a chopper. He produced PM notes which are marked as Exhibit 79. His observations are recorded in the postmortem notes. This shows that Poonam was mercilessly murdered. Multiple blows were mounted on her. The fact of multiple injuries necessarily leads to the conclusion that the intention to kill Poonam was jointly shared by all the accused. Accused no. 1 was not a silent spectator or a passive participant but she actively played a role in killing Poonam. She is a lady having two children to look after, however, after considering the nature of the attack and her role as described by PW-1 and PW-2, though she was not holding any weapon, she held the hands of Poonam to enable accused to assault her. Therefore, her offence cannot be brought to a lesser degree. We hereby confirm the conviction of the accused persons. Appeal is dismissed.

(MRS. MRIDULA BHATKAR,J.)

(MRS. V.K. TAHILRAMANI, J.)