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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.195 OF 2009

Chandar Armogam Nayakar	]
Age : 30 years, residing at room No.4	]
Behind Central Building, Opp. Kalbhadevi Post	].. <u>Appellant</u>
Office, Bomanji Master Road,	] (Original
Mumbai 400 002	] Accused No.1).
	]
Presently in Central Prison Arthur Road Jail	]
Mumbai	]

V/s.

State of Maharashtra	]
At the instance of Azad Maidan Police Station	]
Mumbai	] ... Respondent

Mr. Manas N. Gavankar, for the appellant.
Mr. A.S. Shitole, APP for the Respondent State.

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

DATE : 21st JANUARY, 2016.

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

1. The appellant-original accused No.1, who stands convicted for the offences punishable under Sections 302 and 450 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life on the

first count and rigorous imprisonment for 7 years and fine of Rs.1,000/- in default to suffer rigorous imprisonment for three months, on the second count, by the judgment and order dated 20th January, 2009, by Ad-Hoc Additional Sessions Judge, Court No. 05, Sewree, Mumbai, in Sessions Case No.618 of 2009, by this judgment challenges his conviction and sentence.

2. Facts, as are necessary for deciding this appeal, may be stated as follows :-

P.W.1 Vyankatesh is the younger brother of deceased Arjun, P.W.3 Valliama is their mother. The appellant is son of Nagama, original accused No.2, since acquitted. Nagama is the sister of P.W.3 Valliama. They were residing adjacent to each other, in room No.6, behind Central Building Chawl.

3. The appellant used to have suspicion about illicit relations between his wife Meena and deceased Arjun. As per prosecution case, on that count on 2nd June, 2008, at about 11.30 p.m., while deceased Arjun was sleeping in the kitchen alongwith his mother P.W.3 Walliama,

the appellant came there and gave several blows of sickle to the deceased. His mother Nagama exhorted him to do so. Hearing the shouts, P.W.1 Vyankatesh, who was sleeping in another room rushed there. He saw appellant assaulting the deceased Arjun who was lying in the pool of blood. He raised alarm. As a result, appellant ran away from the house with sickle in his hand, towards the tea stall. P.W.1 Vyankatesh lifted Arjun with the help of his mother, P.W.6 Ramchandra the milkman and P.W.8 Pandu. As taxi was not available, they took him on hand-cart, to G.T. Hospital. There Doctor declared him dead on admission.

4. Meanwhile, on the receipt of information from the hospital, P.W.15 PSI Mahale, went there and recorded complaint Exh.13 of P.W.1 Vyankatesh. On his complaint, C.R.No.129 of 2008 came to be registered against the appellant and his mother Nagama, on the same night at 1.30 a.m.

5. After the inquest panchnama Exh.36, P.W.15 PSI Mahale, sent the dead body for postmortem examination. P.W. 5 Dr. Sonali Khairmode, conducted postmortem and found the cause of death as

shock due to multiple stab injuries. P.W.15 PSI Mahale, then drew scene of offence panchnama at Exh.15 and also seized the blood stained clothes of P.W.1 Vyankatesh and his mother P.W.3 Valliama under panchnama Exh.41. From the spot also he collected blood stains and took the photographs of scene of offence.

6. Further investigation of the case was handed over to P.W.16 PSI Rekudwad. On the receipt of investigation papers, he recorded statements of P.W.3 Valliama and other witnesses. The appellant came to be arrested and during the course of interrogation, he showed his readiness and willingness to produce his blood stained clothes and the sickle. Memorandum panchnama to that effect vide Exh.34 was executed on 5.6.2008, which led to the recovery of blood stained sickle and his clothes. The seized Muddemal articles were sent to Chemical Analyzer vide letters Exh Nos 48 and 49. C.A. Reports are produced on record at Exh. Nos 50 and 51. The accused No.2 Nagama was arrested on 6.6.2008 and further to completion of investigation, he filed chargesheet in the Court against both the accused.

7. On committal of the case to the Sessions Court, the trial

Court framed charge against the appellant and his mother vide Exh.4. Both of them pleaded not guilty and claimed the trial.

8. In support of its case, prosecution examined in all 16 witnesses. On appreciation of their evidence, trial Court was pleased to convict and sentence the appellant as aforesaid for both offences under Sections 302 and 450 of IPC; whereas acquitted accused No.2 Nagama.

9. This judgment of the trial Court is challenged in this appeal by learned counsel for appellant; whereas supported by learned APP. In our considered opinion before adverting to the rival submissions advanced by them, it would be useful to refer to the evidence on record.

10. In order to prove homicidal death of Arjun, prosecution has examined P.W.5 Dr. Sonali Khairmode, who has conducted postmortem on his dead body and found as many as 25 incise and stab injuries, coupled with abrasions. There were corresponding internal injuries to the walls, ribs, cartilage and plura coupled with fracture in Thorax region. According to her therefore, cause of death was shock due to multiple stab injuries and hence unnatural one. Through her evidence,

prosecution has proved postmortem notes at Exh.19 and cause of death certificate Exh.20. The cross examination of this witness is declined by defence, thereby indicating that they are not disputing the homicidal death of deceased Arjun. Otherwise also, evidence of P.W.5 Dr. Kharmode, sufficiently proves on record the cause of death as multiple stab injuries and incise wounds on the dead body of Arjun.

11. The prosecution case against appellant stands on the convincing, reliable and clinching evidence of P.W.1 Vyankatesh and his mother P.W.3 Valliama. Both of them are eye witnesses to the incident. Their presence in their house at the time of incident is also natural one as incident has taken place at about 11 to 11.30 p.m. As per evidence of P.W.3 Valliama, she was sleeping in the kitchen alongwith her son Arjun whereas P.W.1 Vyankatesh was sleeping in another room. At about 11.30 p.m, appellant came to their house and stated that he wanted to talk with Arjun, but instead of talking, he started inflicting sickle blows on Arjun. Therefore, she raised shouts to save her son. On hearing her shouts, P.W.1 Vyankatesh woke up and came to the kitchen. He also saw that the appellant was assaulting his brother Arjun with sickle. He raised shouts and alarm after seeing that Arjun was lying in the pool of blood.

Seeing him, the appellant ran away with sickle in his hand. Then as per evidence of both these witnesses, they lifted Arjun and brought him outside the house for taking him to the hospital, but no taxi was available. Then with the help of P.W.8 Pandu and P.W.6 milkman Ramchandra, they put Arjun on the hand cart and took him to G.T. Hospital, where he was declared dead.

12. The evidence of both these witnesses is completely and fully supported by P.W.6 milkman Ramchandra, who has deposed that he had extended help for taking injured Arjun to the hospital on the hand-cart. There is also corroborating evidence of P.W.8 Pandu the neighbour, who was sleeping in the Mariama temple near his house and on hearing shouts of P.W.3 Valliama to save her son, has rushed there. He saw Arjun lying in the pool of blood. He asked P.W.3 Valliama, how it happened and she narrated him that the appellant assaulted Arjun. According to his evidence, P.W.1 Vyankatesh, P.W.6 Ramchandra Yadav milkman was with him. With his help Arjun was kept on the hand cart and taken to the hospital, as taxi was not available. It is his further evidence that thereafter he went to call elder sister of Arjun, who was residing at Dhobitalav.

13. P.W.4 Saraswati is elder sister of Arjun. She has corroborated evidence of P.W.8 Pandu by deposing that at about 11.45 p.m. Pandu came to her house and informed her that the appellant had assaulted Arjun and was taken to the hospital. She has further deposed that the clothes of Pandu were blood stained. She herself then went to the hospital where Doctor declared that Arjun was dead on admission.

14. If at all any further corroboration is required to this evidence, it is forthcoming also in the form of prompt lodging of F.I.R. (Exh.31) in the hospital itself which gives all the details of the incident. P.W.15 PSI Mahale has deposed that, on receipt of information from the hospital rushed there and recorded complaint of P.W.1 Vyankatesh Exh.13. C.R. No.129 of 2008 was registered on his complaint on that night itself at 1.30 p.m. against appellant.

15. Further investigation of the case conducted by P.W.16 PSI Rekudwad proves the evidence like scene of offence panchnama Exh.15 with the photographs thereof and the inquest panchnama Exh.36. There is also recovery of blood stained clothes of deceased, P.W.1 Vyankatesh

and P.W.3 Valliama under panchnama Exh.41, the crucial recovery is of the sickle and blood stained clothes of the appellant at his instance. P.W.13 Suresh Jadhav, is panch to the memorandum Exh.39, in whose presence, the appellant gave disclosure statement to P.W.16 PSI Rekudwad and thereafter the appellant guided police and panchas to the premises of P.W.12 Mohd Shakeel and produced the knife and clothes which came to be seized under panchnama Exh.14.

16. There is further corroboration to the recovery evidence from P.W.12 Mohd. Shakeel. According to his evidence, he was knowing the appellant. The appellant had come to his house on 2.6.2008 at about 12.15 in the midnight alongwith his wife and informed him that as the quarrel has taken place between him and his brother, he had come at night time. He has further stated that he took the appellant and his wife to the first floor for sleeping. At that time he found that the clothes of the appellant were blood stained. On the next day, in the morning the appellant left with his wife, wearing the clothes of this witness and keeping his blood stained clothes in his house. He has produced those blood stained clothes before the police when police came there in pursuance of disclosure statement given by appellant to the police.

17. Further there is also evidence of P.W.11 Ajay Abole panch to the recovery panchnama of the clothes and knife who has completely supported prosecution case. As per evidence of P.W.16 PSI Rekudwad the seized articles including blood stained knife, blood stained clothes of the deceased, the appellant, P.W.1 Vyankatesh and P.W.3 Valliama were sent to Chemical Analyzer and the C.A. report Exh.31 proves the presence of human blood stains thereon.

18. The prosecution has also proved on record the motive for commission of this offence the suspicion which appellant was carrying about illicit relations and intimacy between his wife and the deceased Arjun. The evidence on record on this aspect as deposed by P.W.1 Vyankatesh, P.W.3 Valliama and P.W.4 Saraswati, again has remained completely unshattered. It may be true that P.W.14 Meena, the wife of the appellant had not supported the prosecution case on this aspect, but then it is bound to be so. One cannot expect her to admit her intimacy or illicit relations with the deceased, even otherwise also, being a lady and the wife of the appellant. However, she has admitted that she was having cordial relations with Arjun. She has further admitted about occurrence

of the incident on that night when she heard shouting of P.W.3 Valliama, hence came out of the house and saw Arjun in injured condition.

19. Thus, the prosecution case stands proved on all the aspects. The authorities on which learned counsel for the appellant has placed reliance, **Ishwarbhai Narayan Makwana -vs- The State of Maharashtra, 2013 ALL MR (Cri) 988** and **Rekha Sitaram Chavan -vs- The State of Maharashtra, 2014 ALL MR (Cri) 3279** pertain to a case based on circumstantial evidence and hence they cannot be made applicable to the facts of the present case, as the present case is based on the direct evidence of witnesses and is supported with corroborating evidence.

20. As a result, we have absolutely no hesitation in holding that the prosecution has proved its case against appellant beyond reasonable doubt. The appeal, therefore, holds no merits and hence stands dismissed.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed judgment.