

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 403 OF 2014

Krishna Gopinath Mali	]
R/o 36/04, Dhulekar House,	]
V.N.Purav Marg,	]
Behind Hanuman Temple,	]
Chunabhatti, Sion, Mumbai	]
(At present lodged at Nashik Road	]
Central Prison, Nashik)	]
	]..Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]
[Through Police Inspector,	]
Chunabhatti Police Station],	]
Mumbai	]..Respondent

....

Ms. Nasreen S.K. Ayubi Advocate appointed for the Appellant
Smt. V.R. Bhonsale A.P.P. for the State

....

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

DATED : FEBRUARY 11, 2016

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 17.12.2013 passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No. 311 of 2013. By the said judgment and order, the learned Sessions Judge convicted the appellant under Sections 302 and 506 of IPC. For the offence under Section 302 of IPC, the appellant has been sentenced to life imprisonment and fine of Rs. 500/- i/d R.I. for three months. For the offence under Section 506 of IPC, the appellant has been sentenced to R.I. for two years.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Shankar was the father of PW 1 Deepak. Deepak is the first informant in the present case. Deepak was residing at Chunabhatti, Mumbai along with his wife, father and mother. The house of the appellant was situated opposite the house of Deepak. Vidya was the wife of Deepak. Vidya was earlier married to the appellant. Thereafter Vidya married PW 1 Deepak. On account of this, the appellant used to raise disputes with Deepak. The appellant also used to abuse

Shankar the father of Deepak and the appellant used to threaten Shankar as well as Deepak that he would cause harm to them. Due to this dispute, Deepak along with his wife Vidya shifted to another house which was situated at Jijamata Nagar. The parents of Deepak continued to reside at Chunabhatti. Deepak used to frequently visit the house of his parents in order to enquire about their well being. About one month before the murder of Shankar, Deepak had gone to the house of his father Shankar to meet him. At that time, his father Shankar told Deepak that the appellant used to come to his house under the influence of liquor and used to threaten that he will kill them i.e. Shankar and Deepak.

(ii) Incident occurred on 24.11.2012. At about 2.30 p.m. the appellant quarreled with deceased Shankar. The appellant then told Shankar that he will not spare Shankar. Thereafter the appellant went inside his house. Meanwhile, Shankar was locking the door of his house. Thereafter the appellant came there from his house armed with a sickle. The appellant dealt blows with sickle on Shankar from behind on his head. Shankar started shouting for help. Again the appellant came

from behind Shankar and gave three blows with sickle on the head of Shankar. The appellant told Shankar that he would not leave Shankar alive. Shankar fell on the ground. The appellant ascertained whether Shankar was dead or not. The appellant then threw the sickle on the ground and ran away. PW 2 Santosh and PW 3 Anil witnessed the incident. PW 1 Deepak was informed about the incident by PW 2 Santosh. Deepak then lodged F.I.R. Thereafter, investigation commenced. After completion of investigation, the charge sheet came to be filed. In due course, case was committed to the Court of Sessions for trial.

3 Charge came to be framed against the appellant under Sections 302, 504 and 506 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant

and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant assaulted Shankar with sickle and caused his death.

5 To support the conviction, the prosecution has relied on the evidence of two eye witnesses i.e. PW 2 Santosh and PW 3 Anil. Santosh has stated that he was earlier residing at Chunabhatti. He knew deceased Shankar and his son Deepak. He also knew the appellant. Vidya is the wife of Deepak. Vidya was earlier married to the appellant and after divorce, Vidya married Deepak. Deepak was the son of deceased Shankar. The house of the appellant and the house of Deepak and Shankar were situated opposite each other. Because Deepak married Vidya, quarrels used to take place between the appellant and Shankar. Because of these quarrels, Deepak along with his wife Vidya went to reside elsewhere. Deepak used to visit his parents house at Chunabhatti often for making

enquiry about their health. Santosh has stated that one month prior to the incident, Deepak met him. At that time, Deepak told him that the appellant used to abuse his father Shankar and used to give threat to kill Shankar. Santosh has stated that incident took place on 24.11.2012. At about 2.30 p.m. near the room of Shankar, he heard hue and cry, hence, he went there. He saw quarrel going on between Shankar and the appellant. The appellant told Shankar that he will not spare him. Thereafter, the appellant went inside his house. Shankar did not pay any attention and was locking the door of his house. Thereafter the appellant came from his house armed with a sickle. From behind Shankar, the appellant dealt blows with the sickle to Shankar on the head. Shankar started shouting for help. Again the appellant came from behind Shankar and gave three blows with sickle on the head of Shankar. The appellant told Shankar that he would not leave Shankar alive. Shankar fell down on the ground. The appellant then ascertained whether Shankar was dead or not. The appellant then threw the sickle at the spot and ran away. Police van came to the spot. Shankar was taken in the police van and shifted to Sion hospital. As far as the actual incident is

concerned, the evidence of PW 3 Anil is on similar lines as that of PW 2 Santosh.

6 The learned counsel for the appellant submitted that the evidence of both these witnesses cannot be relied upon because there was delay in recording their statements. We have carefully perused the evidence. On going through the evidence, we find that the incident has occurred at about 2.35 p.m. and the F.I.R. has been lodged at 5.00 p.m. In the F.I.R. there is clear reference to PW 2 Santosh witnessing the incident. PW 1 Deepak who lodged F.I.R. has stated that on 24.11.2012 he was informed that his father had received injuries in a quarrel and was shifted to Sion hospital, hence, he went to Sion hospital. There he met PW 2 Santosh Jadhav. Santosh told him that the appellant was abusing his father Shankar in filthy language. The appellant then said that he would finish Shankar. Thereafter the appellant went to his house. At that time, Shankar was locking the door of his house. Santosh further told Deepak that the appellant came from behind and dealt two blows with sickle on his father Shankar. Shankar shouted for help. Then the appellant told

Shankar that he would finish him. Thereafter the appellant assaulted Shankar thrice with the sickle. We would again like to advert to the evidence of PW 2 Santosh wherein he has stated that he told the police about the incident when he was travelling in the police van to Sion hospital. Santosh has stated that he assisted in shifting Shankar Patil by police van to the hospital. Looking to all the above facts, we find no reason to disbelieve the evidence of PW 2 Santosh who is an eye witness to the incident.

7 As far as the evidence of PW 3 Anil is concerned, his statement was recorded on 27.11.2012 i.e. on the 3rd day of the incident, however, we find that his evidence has not been shaken in any other aspect. Moreover, the Investigating Officer has not been asked any question in relation to the delay in recording the statement of PW 3 Anil. Looking to all these facts, we are of the opinion that his evidence can safely be relied upon. However, even if the evidence of PW 3 Anil is excluded, we find the evidence of PW 2 Santosh to be trustworthy and reliable.

8 The prosecution case is further corroborated by the medical evidence. PW 5 Dr. Dhiraj conducted the post mortem on the dead body of Shankar. He found two stab wounds and four incised wounds on the body of Shankar. The stab wounds were in the right and left mastoid region and the incised wounds were on the arms and fingers. Dr. Dhiraj has stated that cause of death was "hemorrhagic shock following stab injuries (unnatural)". Dr. Dhiraj has opined that the injuries were possible due to muddemal sickle which is Article-A. The sickle was found at the spot. It came to be seized. It was sent to C.A. Koyata (sickle) was found stained with blood of "O" group. The clothes of the deceased which were stained with blood were also sent to the C.A. They were also found to be stained with blood of "O" group. From this, it can safely be inferred that blood group of the deceased was "O". Thus, the finding of blood of "O" group on the sickle further corroborates the prosecution case.

9 On going through the evidence on record, we find that there is sufficient evidence to show beyond reasonable doubt that the appellant committed the murder of Shankar by

assaulting him with the sickle. Thus, we find no merit in the appeal. Appeal is dismissed.

10 Office to communicate this order to the appellant through the concerned Jail Superintendent where the appellant is lodged.

11 We quantify legal fees to be paid to Advocate Ms. Nasreen S.K. Ayubi by the High Court Legal Services Committee at Rs. 5000/-.

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