

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

CRIMINAL APPEAL NO. 546 OF 2014

Janu Bendu Wagh]
C.6122, Circle No. 1/4]
Kolhapur Central Prison,]
Kalamba, Kolhapur 416007.].. Appellant
[Ori. Accused]

Vs.

The State of Maharashtra]
Through Jawhar Police Station)].. Respondent

Mrs. Farhana Shah Advocate appointed for the Appellant
Smt. V.R. Bhonsale A.P.P. for the State

**CORAM : SMT.V.K.TAHILRAMANI AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : MARCH 07, 2016

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

1 The appellant-original accused has preferred this appeal against the judgment and order dated 11.11.2013 passed by the learned Additional Sessions Judge, Thane in Sessions Case No. 476 of 2011. By the said judgment and order, the learned Sessions Judge convicted the appellant

under Section 302 for causing the death of his wife Manjula, under Section 326 for causing injuries to his brother Babu and under Section 325 for causing injuries to his nephew Kisan. For the offence under Section 302, the appellant was sentenced to life imprisonment and fine of Rs.5000/- in default S.I. for five months. For the offence under Section 326, the appellant was sentenced to R.I. for five years and fine of Rs.3000/- in default S.I. for three months and for the offence under Section 325, the appellant was sentenced to R.I. for three years and fine of Rs.2000/- in default S.I. for two months. The learned Sessions Judge directed that all the substantive sentences shall run concurrently.

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

(i) The appellant was residing with his wife Manjula and six children at Masnewadi in Taluka Jawhar in District Thane. The first informant PW 1 Babu was the brother of the appellant. PW 1 Babu was residing near the house of the appellant. PW 12 Kisan was the nephew of the appellant as well as PW 1 Babu. His house was one house away from the house of the

appellant. The appellant was addicted to liquor. The appellant used to suspect that his wife was having illicit relations with some other person.

(ii) The incident occurred on 18.8.2010. At that time, the appellant along with his wife Manjula and children were in the house. The appellant started beating his wife Manjula. The appellant then inflicted blows with axe on his wife Manjula including a blow on the neck. Manjula fell down. Thereafter, the appellant started chasing his children with axe in his hand. Therefore, his daughter PW 8 Sunita and son PW 9 Rama went to the house of their paternal uncle PW 1 Babu along with one more brother. The appellant followed them to the house of Babu. Babu asked the appellant why he his beating his children. Thereupon, the appellant inflicted blows with axe on the head of PW 1 Babu. In the meanwhile, PW 12 Kisan who was the nephew of the appellant, came to the spot. Kisan told the appellant not to beat anybody. Then the appellant inflicted blow with sickle on the hand of Kisan. Manjula died on account of assault. PW 1 Babu lodged F.I.R. Thereafter investigation commenced. The dead body of Manjula was sent for post-

mortem. The appellant was arrested. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3 Charge came to be framed against the appellant. Appellant pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1, 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 there is no merit in the appeal.

5 The star witness in the present case is PW 8 Sunita. Sunita was the daughter of the appellant and deceased

Manjula. Sunita has stated that on 18.8.2010 she, her brother Rama, her siblings and her parents were at home. Sunita has stated that the appellant used to consume liquor and he used to suspect her mother and at about noon time, her father started beating her mother. Her father inflicted blows with axe on her mother. Her mother fell down. Thereafter her father started chasing her and her siblings with axe in hand. Therefore, they went to the house of their uncle (PW 1 Babu). Their father came there. Their uncle told their father that why he was beating the children. Thereupon, her father inflicted blow with axe on the head of her uncle. At that time, Kisan (PW 12) came there and told their father not to beat anybody. Her father then inflicted blow on the hand of Kisan. Meanwhile, their uncle had hidden the children. Thereafter, their father went away.

6 PW 9 Rama is the son of the appellant and the deceased. He has also stated that his father used to suspect his mother. Rama has stated that the incident took place at about noon. His father was saying that he would kill his mother. His father then inflicted blows with axe on his mother

including a blow on the neck. His mother fell down. Rama has stated that his father also inflicted blow with axe on the head of his uncle (PW 1 Babu) and on the hand of Kisan (PW 12).

7 PW 12 Kisan was the nephew of the appellant. Kisan was staying one house away from the house of the appellant. Kisan had stated that on the day of the incident, he was present in his house. In the afternoon, the children of the appellant came to his house crying and informed him that their father had killed their mother with an axe. Kisan then went to the house of the appellant to see whether the appellant had really killed his wife. He saw Manjula lying dead. At that time, the appellant assaulted him with sickle on his right arm, due to which, he sustained bleeding injury.

8 PW 1 Babu is the brother of the appellant. Babu has stated that the appellant is his brother. Manjula (deceased) was wife of the appellant. The appellant was residing in the village along with his wife and children. Babu has stated that on the day of the incident, he was at home. The children of the appellant came to his house and told him that their mother was

assaulted by their father. Then Babu went towards the house of the appellant. The appellant then inflicted blow with axe on the forehead of Babu.

9 The prosecution case is corroborated by the medical evidence. PW 10A Dr. Khot conducted the post mortem on the dead body of Manjula. On external examination, he found two injuries on her person i.e. (1) chop wound between right shoulder and base of neck which was 12 cms. x 8 cms. 1st, 2nd and 3rd rib cut and in between intercostal muscle and neurovascular bundles were cut. Crack to upper border of scapula 3 x 2 cm. Trapezius muscle cut. Subclavian artery and vein cut, Apex of the lung seen. (2) Chop wound over back between left 11th and 12th rib, horizontal elliptical in shape margin sharp length 8 cm. medial end 5 cm. from vertebral column lateral end upto midaxillary line breadth 3 cm. depth 5 cm. upto spleen, underlying spleen seen, 11th rib cut 5 cm. from its attachment to vertebra, 12th rib cut at 8 cm. from its attachment to vertebra. According to Dr. Khot, cause of death was due to hypovolumic shock as consequence of massive hemorrhage. In the opinion of Dr. Khot, the injuries can be

caused with an axe. Thus, we find that the medical evidence corroborates the prosecution case.

10 The learned counsel for the appellant submitted that the prosecution case cannot be believed because PW 10A Dr. Khot has stated that injuries are also likely to be caused by sword. This solitary sentence in the cross-examination by itself is not sufficient to overthrow the prosecution case because, in examination-in-chief, Dr. Khot has categorically stated that the injuries can be caused by axe. The eye witnesses have clearly stated that the appellant assaulted Manjula with an axe. We see no reason to discard their testimony especially in view of the evidence of Dr. Khot that the injuries can be caused by axe.

11 It is further the prosecution case that the appellant had also assaulted PW 1 Babu with an axe and PW 12 Kisan with sickle. This is corroborated by the evidence of PW 11 Kawale. Dr. Kawale has stated that on 18.8.2010 at about 3.40 p.m. he examined Kisan (PW 12). On examining Kisan, he noticed one injury i.e. CLW over right elbow anterior aspect 3 x

2 x 1.5 cm with underlying vessels cut. According to Dr. Kawale, the nature of injury was grievous. He gave primary treatment and sutured vessels which were cut under anesthesia. He advised and referred the patient to higher center for surgical treatment.

12 Dr. Kawale also examined PW 1 Babu. On examination of Babu, he noticed one injury i.e. CLW over forehead 3 x 1.5 x 1 cm. with underlying frontal bone fracture. According to Dr. Kawale, the nature of injury was grievous. He advised and referred the patient to higher center for CT scan of brain. Dr. Kawale has specifically stated that both the patients came to the hospital with history of assault. After examining Kisan and Babu, he issued certificates Exhs. 40 and 41. Thus, the evidence of Dr. Kawale also corroborates the prosecution case.

13 We are of the opinion that the evidence of PW 8 Sunita, PW 9 Rama, PW 1 Babu and PW 12 Kisan taken together, clearly establishes that it was the appellant who assaulted Manjula, Babu and Kisan, hence, we do not find it

necessary to advert to any other evidence. In our opinion, the evidence of these four witnesses is sufficient to sustain the conviction of the appellant. The evidence of these four witnesses proves beyond reasonable doubt that the appellant assaulted and caused the death of Manjula and he also assaulted Kisan and Babu and caused them grievous injuries. Thus, we find no merit in the appeal. Appeal is dismissed.

14 We quantify legal fees to be paid to the appointed Advocate Mrs. Farhana Shah by the High Court Legal Services Committee at Rs. 5000/-.

[SMT. ANUJA PRABHUDESSAI, J.]

[SMT.V.K.TAHILRAMANI, J.]