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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 729 OF 2008

Uttam Vaiju Majukar
Adult, age 22 years, residing at
Village Dewarwadi, Tal. Gadhinglaj,
District – Kolhapur.

.. Appellant
(Org. Accd. No.1)

Versus

The State of Maharashtra
At the instance of Dewarwadi
Police Station.

.. Respondent

Dr. Yug Mohit Chaudhary for appellant.
Mr. J. P. Yagnik, APP for State.

CORAM: NARESH H. PATIL &
PRAKASH D. NAIK, JJ.

RESERVED ON : SEPTEMBER 08, 2016.

PRONOUNCED ON : SEPTEMBER 22, 2016

JUDGMENT [Per Naresh H. Patil, J.] :

1. The appellant and other two accused were charged for offences punishable under Section 302 read with Section 34 and Section 120-B of the Indian Penal Code by the learned Additional Sessions Judge, Gadhinglaj in Sessions Case No. 5 of 2006. The accused pleaded not guilty.

2. By the judgment and order dated 3/5/2008, the learned Additional Sessions Judge, Gadhinglaj, acquitted original accused no. 2 – Vaiju Shivappa Majukar and original accused no. 3 – Waman Hiramani Jadhav for the offence punishable under Section 302 of the Indian Penal Code. The appellant/original accused no.1 – Uttam Vaiju Majukar was convicted for an offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5000/-, in default to suffer further rigorous imprisonment for three months.

3. The prosecution case, in brief, is that all the accused and the deceased were residents of village Dewarwadi. The acquitted accused – Waman Jadhav, was President of Vajinath Temple and another acquitted accused – Vaiju Majukar was the Secretary. Said temple was administered by Pacchim Maharashtra Devasthan Samittee. The deceased and the accused persons were not on good terms. In relation to the administration of the temple, the deceased had filed complaint against Waman Jadhav and Vaiju Majukar. The matter was contested upto High Court. The High Court had directed for calling of meeting of the Pacchim Maharashtra Devasthan Samittee for electing new panel for administering

Vaijanath Temple, which is located in the village. In a meeting held for the said purpose, the panel of deceased and his family members got elected for administering the affairs of the temple. The name of the deceased is Suresh Annappa Bhogan.

4. It is the prosecution case that on the date of the incident i.e. 22/1/2006, there was election of Vaijnath Vividha Karyakari Sahakari Sanstha. The panel of the cousin of the deceased participated in the said election. Deceased Suresh had also taken part in the said election. The panel of the cousin of the deceased got elected. One of the members of their panel, namely, Nagoji Adav was defeated.

5. The prosecution case further suggests that accused were burning crackers in front of the house of Nagoji Adav. There was quarrel between Nagoji Adav and the persons from the group of accused. Deceased Suresh came on the spot. There was some altercation between the accused and deceased Suresh. It is the case of the prosecution that the deceased was stabbed by appellant/accused – Uttam Majukar son of accused – Vaiju Majukar. After the incident, all the accused persons ran away from the spot. Suresh was taken to hospital of Dr. Tarale situated at

Dewarwadi. He was further referred to KLE Hospital, Belgaon. During treatment, he succumbed to the injuries.

6. Police was informed on phone about the incident. Information was recorded in the station diary. PI Angad Jadhavar received information. Head Constable was deputed to visit Belgaon KLE Hospital . It is the prosecution case that Police Head Constable Surange recorded the statement of Vaijnath Bhogan, which was forwarded by the police constable to police station for registration of offence. The Investigating Officer drew spot panchanama on 23/1/2006, collected dung mixed soil. Photographs of the spot of incident were taken. The Investigating Officer went to KLE Hospital at Belgaon, collected blood sample of deceased for sending it to Chemical Analyzer. On the same day, appellant/accused – Uttam was arrested by PSI Naik. The clothes on the person of accused - Uttam were seized under panchanama. Accused – Uttam was sent to hospital for collecting sample of his blood. Thereafter the Investigating Officer recorded statements of persons. A motorcycle, on which deceased Suresh was ridding prior to the incident, was seized. At the instance of accused – Uttam, knife and sweater were seized, while he was in custody. The Investigating Officer collected PM notes, inquest panchanama. He

also issued a letter to Tahsildar to draw map of the spot with the help of Circle Revenue Inspector and collected video CD from Sanjay Kamble in request of inquest panchanama. Seized articles were sent to C.A. for analysis. After doing necessary investigation, the PSI filed charge-sheet in the court of JMFC, Chandgad. A C. A. Report received, was also forwarded. The case came to be committed to the Sessions Court by the learned JMFC, Chandgad.

7. The prosecution has examined in all 15 witnesses. We will proceed to discuss the evidence of the prosecution witnesses.

8. PW 3 – Renuka Yallappa Adhav, PW 5 – Laxman Govind Adhav and PW 14 – Vaiju Ganu Bhogan were examined as eye witnesses. In the evidence, PW 3 – Renuka deposed that her father-in-law had contested the election of the society and he was defeated. For the whole day, she was in the field and returned at about 7 p.m. When she was in the house, persons, namely, Gavadu Karade, Vaiju Majukar and Waman Jadhav were burning crackers in front of her house and were also abusing. At that time, Suresh Bhogan came in front of her house on his motorcycle. She saw appellant – Uttam Vaiju Majukar giving blow with the aid of knife on

the person of deceased Suresh Bhogan. The husband of the witness was also with her. They started shouting. The accused ran away after assaulting the deceased. Suresh was taken to the hospital by Baban Bhogan, Ganpati Kesarkar and others. In the cross-examination, the witness stated that the incident took place at 8.30 p.m. According to the witness, accused Uttam Majukar came immediately from dairy side and stabbed deceased Suresh. He gave one blow on the stomach of Suresh and ran towards main road. The witness lifted head of the deceased and started shouting for help. According to the witness, her clothes were not stained with blood. At about 9 p.m. the police recorded her statement.

9. PW 5 is Laxman Govind Adhav. He deposed that he and his wife were sitting in front of their house. One Gavadu Karade was burning crackers in front of the dairy. One of the crackers went inside the house of Nagoji. Thereafter, quarrel took place between Nagappa and Gavadu. All the accused persons were present in front of the dairy. At that time Suresh Bhogan came on his motorcycle near the spot of incident. Witness deposed before the court that accused Uttam Majukar pulled down Suresh from the motorcycle and gave blow with the aid of knife on his stomach and thereafter ran away. In the cross-examination, the witness denied the

suggestion that he did not witness the assault made by accused – Uttam on the person of Suresh.

10. The next witness is PW 14 – Vaiju Ganu Bhogan, who deposed that on the day of the incident, there was election of society in the village. He had seen the incident of assault where Uttam stabbed deceased Suresh on the part above his genitals. He further deposed that Uttam gave two more blows on the backside of the head of Suresh and thereafter all the accused persons ran away. During cross-examination, the witness stated that the distance between the spot of incident and his backyard is 100 ft. and spot of incident was not visible from the backyard. His statement was recorded on the next day of the incident.

11. Apart from these eye witnesses, the prosecution led evidence of recovery panch PW 2 - Mahadev Gurev. The witness deposed that at the instance of accused – Uttam, one knife was recovered from the stack of grass. The knife was having blood stains. The accused – Uttam also produced one sweater. Both these articles were seized under panchanama.

12. PW 6 – Nago Sidhappa Adhav was examined to prove that

Gavadu Karade was bursting fire crackers in front of his house. PW 7 – Annappa Pujari was examined by the prosecution to establish that PW 5 was in-charge of the Vajinath Devasthan Temple and there was dispute between two groups regarding administration of the same. PW 8 – Sudhir Deshpande, who is a recovery panch. A memorandum of disclosure was drawn on 28/1/2006 at 9.40 a.m. PW 9 – Annappa Bhogban, who was examined by the prosecution to establish that there was rivalry between the two groups. PW 10 – Mohan Patil, who was examined as eye witness, but declared hostile. PW 11 is Mahadev Bhogan, according to whom, victim was taken to KLE Hospital from the clinic of Dr. Tarale. PW 12 – Ganpati Gundam deposes that there was a quarrel between Vaiju Majekar and Suresh Bhogan.

13. PW 13 is Dr. Manjulabai Hanumanaik, who is a Autopsy Surgeon. She deposed that on 23/1/2006, she received dead body of one Suresh Bhogan from APMC Police Station. She conducted postmortem on the dead body. She noticed following external injuries :-

- (1) Slash wound incised measuring 4 cm. x 0.2 cm. by bone deep. Shape linear vertical over the Lt. side scalp 5 cm

behind left ear upper aspect scalp might have been caused by thin sharp blade weapon.

- (2) Slash wound measuring 3.5 x 0.2 cm. bone deep shape linear oblique 4 cm behind wound no.1 might have been caused due to thin sharp blade weapon.
- (3) Stab wound measuring 3 cm x 2 cm intestine protruded on approximation 4 cm. x 0.1 to 3 cm. spindle linear shape injuries upper and on mid line lower end 1 cm. Rt. to mid line over lower abdomen about 6 cm above the pubis, might have been caused due to thin 4 cm. width sharp blade.

According to the doctor, Suresh Bhogan died because of intra abdominal hemorrhage and shock due to lower abdominal penetrating stab wound by thin blade sharp edged weapon. The injuries sustained by deceased were possible by Article No.6. According to her, death was possible due to intestinal injuries, which is shown in PM report at Sr. No.3. During cross-examination, the witness stated that in Column No. 4 of the PM report, she had mentioned that the contents of stomach were smelling of alcohol.

14. PW 15 is ASI Revappa Gaggi, who carried muddemal articles to Chemical Analyzer. PW 16 – PI Angad Rambhau Jadhavar is

Investigating Officer. The Investigating Officer narrated in detail the steps taken by him during the investigation of the offence. In the cross-examination, the witness stated that he recorded the statement of Laxman on 10/2/2006 for the first time and of Vaiju on the same day.

15. Learned counsel Dr. Yug Chaudhary appearing for the appellant submitted that evidence of prosecution witnesses nos.3, 5 and 15 is self contradictory. Intrinsic reliance cannot be placed on their evidence. PW 3 has excluded presence of PWs 5 and 14. PW 3 deposed that except two named persons, no one else was present. Her evidence is at odds with the evidence of the other witnesses. According to PW 3, accused – Uttam stabbed the victim once in the abdominal region, whereas postmortem report clearly mentioned that there were three stab injuries on the person of the deceased, one in abdomen and two at the back side of the head. The witness had failed to account for the remaining two injuries. PW 3 stated that her statement was recorded at 11 p.m. on the day of the incident i.e. 22/1/2006. However, PW 1's complaint was registered at 1.30 a.m. on 23/1/2006. According to the learned counsel, PW 3 categorically asserts that PW 1 was present at the spot. However, PW 1 himself admits that he was not present at the spot. PW 5, an eye witness, excluded the presence

of PW 3 at the time of assault. PW 3 deposes that she lifted the accused's head, but states that there were no blood stains on her clothes.

On the testimony of PW 5, learned counsel for the appellant submitted that the witness asserted that the accused stabbed the victim, which is contrary to the PM report. PW 5 is an interested witness, who is in-charge of the Vaijnath Devasthan Committee, regarding which there was a dispute. PW 3 and PW 4, the eye witnesses, deposed that at the time of bursting crackers, Suresh arrived at the spot, whereas PW 5 deposed that the bursting of crackers led to a quarrel between Nagappa and Gadavu. Thereafter he returned to his house for dinner and after completing the dinner, when he was standing in front of his house, he saw that victim arrived on the spot and the accused stabbed him.

Learned counsel further submitted that the testimony of PW 14 cannot be relied upon. The IO testified that the statement of PW 14 was recorded on 10/2/2006 i.e. 19 days after the incident. Learned counsel submitted that from the backyard of the house of PW 14 it was not possible to see the spot of incident. The counsel submitted that the eye witnesses differ on the time of incident, manner of assault, presences of witnesses.

There are contradictions in the evidence of eye witnesses. On the nature of injuries, there are inherent contradictions in the version of the eye witnesses. Learned counsel submitted that the seizure of clothes of appellant-accused on his arrest having blood stains, is not convincing. Appellant -accused was arrested on 23/1/2006 at 9.15 p.m. As per the panchanama no blood stains were found on either pant or the shirt worn by the appellant-accused at the time of his arrest. The clothes worn by the appellant-accused were seized and sent for chemical analysis after 22 days i.e. on 13/2/2006. The discovery did not precede by any information from the accused. This clearly establishes that evidence of discovery is not reliable. The IO admitted that one of the articles seized was not properly sealed and hence returned by the CA.

16. Learned counsel alternatively argued that in case the court arrives at a conclusion that prosecution case is worth reliable, then the accused could be convicted for lesser offence. The learned counsel submitted that the incident took place out of a sudden fight. Injuries were not sufficient to cause death in the ordinary course of nature, as it was not conclusively proved that injuries allegedly inflicted by the appellant-accused were sufficient in the ordinary course of nature to cause death.

Learned counsel placed reliance on the judgment of the Supreme Court in the case of State of Punjab vs. Parveen Kumar [(2005) 9 SCC 769]. Para 10 of the said judgment reads as under :

“10. While appreciating the credibility of the evidence produced before the court, the court must view the evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions are given but one name is common in both of them cannot be a ground for convicting the named person. The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations. It may be that if there was any other reliable evidence on record, this Court could have considered such corroborative evidence to test the truthfulness of the dying declarations. The two dying declarations, however, in the instant case stand by themselves and there is no other reliable evidence on record by reference to which their truthfulness can be tested. It is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence. The High Court while considering the evidence on record has rightly applied the principles laid down by this court in *Thurukanni Pompiah vs. State of Mysore* and *Khushal Rao vs. State of Bombay*”.

17. Learned APP submits that the presence of the appellant-accused is established by the prosecution. There may be some inconsistencies in the evidence led by the prosecution, as pointed out by the defence, but that should not be a ground to reject the evidence of the eye witnesses in totality. The time of incident, the manner of assault, prompt reporting to police and the further steps taken by the Investigating Agency, indicate that there was no fabrication of the evidence, nor any exaggeration on the part of the prosecution witnesses to falsely involve the accused persons. The articles were seized at the instance of the appellant-accused, the recovery panchanamas are proved by the panchas, the medical evidence supports the prosecution case. The deceased suffered two injuries on the backside of his neck. PW 3 did not refer to all the injuries inflicted on the deceased, but on that account the evidence of the eye witnesses cannot be discarded. Learned APP, therefore, pleaded to dismiss the appeal as the same is without merit.

18. We have perused the record, judgment cited and considered the submissions advanced before us.

19. We find some substance in the submissions of the learned counsel appearing for the appellant that there are some inconsistencies in the evidence of the eye witnesses' account of the incident in question. The inconsistencies relate to manner of assault, presence of some of the witnesses, number of injuries caused. Learned counsel for the appellant has very minutely dissected the evidence of the eye witnesses and the other witnesses of prosecution. On the day of the incident, election of society took place where there were two panels, one of the panel was of the side of deceased and another was of the side of accused. At the same time, dispute was going on in respect of administration of the temple. The matter was contested upto High Court. Already there was bickering in the minds of both the sides. One person from the panel lost the election. In this situation, some crackers were burnt and that gave rise to the unfortunate incident. Deceased Suresh came on the spot. The appellant assaulted on his stomach with the help of a knife. We do not find any conclusive evidence to suggest that the remaining two injuries suffered by the deceased on the back side of his neck were caused by the appellant-accused. The third injury noticed by the Medical Officer, who conducted autopsy is stabbed wound measuring 3 cm x 2 cm intestine protruded on approximation 4 cm x 0.1 to 2 cm. According to the Medical Officer,

deceased Suresh died because of intra abdominal hemorrhage and shock due to lower abdominal penetrating stab wound by thin blade sharp edged weapon. It is clear that though the deceased suffered two more injuries, which are described as slash wound, incised in nature behind left ear-upper aspect scalp by sharp edged weapon, the cause of death was due to the stab injury on the abdominal region. These two slash injuries were not responsible for the death of deceased Suresh. The question is who inflicted the stab injury on the abdominal region, whether it was appellant or somebody else. After taking into consideration in totality the evidence placed on record, it cannot be safely held that the appellant was responsible for inflicting the stab injury on the person of the deceased.

20. The deceased was brought to the KLE Society's Hospital & Medical Research Centre, Belgaon on 22/1/2006 at 10.04 p.m. and he was declared dead at 11.55 p.m. on the same day. The Medical Officer noticed smell of alcohol in the stomach contents. The PM report is at Exh. 78 dated 23/1/2006.

21. On behalf of the defence, inconsistency in the evidence of the eye witnesses is pointed out, more particularly in respect of PW 3 not

referring to the presence of other two eye witnesses i.e. PWs 5 and 14, but on the said count, the evidence of eye witnesses cannot be disbelieved. The situation on the day of the incident needs to be appreciated. There was election of society in the village, bursting of crackers was going on, there was dispute in the two rival groups, one panel was declared elected, another panel lost election and when this all was going on, deceased appeared on the spot and the appellant assaulted the deceased on his abdomen and ran away. Seeing this, PW 3 rushed to the spot and tried to help the deceased. Some inconsistencies, variations are noticed in the evidence. But taking into consideration the background situation and the facts in totality, the case is required to be considered. The prosecution has brought on record evidence in respect of recovery, sending of articles to C.A., prompt investigation by police and the medical evidence. Taking into consideration the prosecution case, the trial court acquitted two accused persons i.e. original accused nos.2 and 3. The appellant-accused no.1 was convicted and sentenced for inflicting one stab injury with the help of knife. The question is as to whether the appellant could be convicted for an offence punishable under Section 302 of the IPC.

22. From the evidence on record, it could be noticed that the

incident was not premeditated one. The deceased appeared on the spot and suddenly the appellant assaulted the deceased with a knife and thereafter ran away. The appellant did not take disadvantage of the condition of the deceased by inflicting successful blows. The Medical Officer noticed that there was smell of alcohol in the stomach contents of the deceased. The deceased unfortunately died due to the stab injury. The Medical Officer stated that three injuries found over the body of Suresh could be possible by Article No.6 and the death was possible due to intestinal injuries. Learned counsel for the appellant submits that the doctor has not deposed before the court that the injuries are sufficient to cause death in the ordinary course of nature. The Medical Officer had given opinion that death was possible due to intestinal injuries.

23. Taking into consideration the overall evidence in totality, we are of the view that the prosecution has established that the appellant inflicted a knife blow on the person of the deceased on the abdominal region. Said injury had caused his death. No doubt, it is a case where the appellant had inflicted one single injury with the help of a knife, no sooner the deceased arrived on the spot. From the evidence on record, it could be noticed that there was no premeditation on the part of the appellant to

assault the deceased.

24. In the facts, we find that the appellant's assault on the deceased is not intended to cause such a bodily injury which would result in his death.

25. The prosecution has brought on record certain circumstances which establish the prosecution case. On the knife, human blood was noticed. On the clothes seized from the person of the appellant, human blood was noticed, though the grouping was inconclusive. The blood group of appellant was found to be unsuitable for grouping.

26. In view of the nature of evidence brought on record, we are of the view that the conviction and sentence imposed against the appellant for offence punishable under Section 302 of the IPC is required to be substituted to a lesser offence. In the facts, we find that the appellant could be convicted and sentenced for the offence punishable under Section 304 Part II of the IPC by substituting the order of conviction and sentence awarded by the trial court.

27. In the facts, we find that the appellant assaulted deceased – Suresh with a knife which resulted in his death. Even if the alternate plea of the defence is considered, then we find that the appellant acted unreasonably by using dangerous weapon while inflicting injury on the vital portion of the deceased. We are, therefore, convinced to award maximum sentence for an offence punishable under Section 304 Part II of IPC.

ORDER

- (i) The appeal is partly allowed.
- (ii) The order of conviction of appellant – Uttam Vaiju Majukar for offence punishable under Section 302 of IPC is set aside.
- (iii) Appellant – Uttam Vaiju Majukar is convicted for an offence punishable under Section 304 Part II of IPC and is sentenced to suffer RI for 10 (ten) years.
- (iv) The order of fine awarded by the trial court is maintained.
- (iii) In case the appellant has served the sentence awarded by this court, then he shall be set at liberty forthwith, if not required in any other case.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)