

and the offence was registered at C.R. No. 124 of 2011 with Raigad Police Station initially under section 307 of the Indian Penal Code.

3. It is the case of the prosecution that the accused Jagannath Dagadu Shirgaonkar and deceased Raghunath Chander Garje are the residents of same village. They are neighbours. The accused developed doubt approximately 1 month prior to the incident that his wife is having illicit relationship with deceased Raghunath. With this motive, on 13th September, 2011 at around 10 a.m. when no family members of the deceased were present in his house, the accused entered the house with axe and he assaulted Raghunath Garje on his head and cheek. Raghunath fell down due to the assault. The complainant, his wife and mother were in the field, they received information about the assault by one Prakash Anandrao Ombale, the next door shopkeeper. As soon as the complainant received this message, he went to the Joglekar Hospital, Shirwal to see his father who was in ICU. On the same day at night, complainant Suresh Garje went to Kikvi Police Station and lodged complaint, which is marked at Exhibit 25. Initially it was registered for the offences punishable under section 307 of the Indian Penal Code. Raghunath Garje was treated in the hospital, however, he did not respond to the treatment and succumbed to

the injuries on 16th September, 2011. Thereafter Section 302 of IPC was added. On 13th September, 2011 at around 9.30 p.m., i.e., immediately after recording of the FIR, the accused himself surrendered to the police along with axe, i.e., the weapon used in the commission of crime. The police seized the clothes of the accused and axe under panchnama (Exhibit 34 and 35). The clothes of the deceased was seized under panchnama (Exhibit 36). The statements of the witnesses were recorded on the next day, i.e., 14th September, 2011 and on the other dates. Inquest panchnama (Exhibit 31) was conducted on 17th September, 2011 and Dr. Amol Balwant Shinde (PW-10) carried out postmortem along with Dr. A.P. Dalvi. The postmortem report is produced, which is marked Exhibit 57. After completion of the investigation, police filed charge in the Court of Magistrate and the learned Magistrate committed the case to the Court of Sessions.

4. The charge was framed against the appellant for the offences punishable under section 302 of IPC. The appellant pleaded not guilty and defended the case that he is innocent. The prosecution in all examined 12 witnesses. The learned Sessions Judge after considering the evidence of the prosecution and the defence adopted by the accused held the accused

guilty for the offence of murder and sentenced him for life. Hence, this appeal.

5. The learned counsel for the appellant/accused submitted that the case of the prosecution stands on very weak evidence. There is no eye witness and the circumstances which are brought on record are not sufficient to establish the guilt of the accused.

6. Learned APP opposed this Appeal and has argued that the conviction given by the trial Court is to be maintained, as the prosecution is successful in proving the chain of the circumstances against the appellant/accused.

7. We went through the entire evidence carefully. There is no eye witness to the incident. Through complainant Suresh Garje and neighbouring witness Kaushalya @ Ratna (PW-2), the prosecution has brought the evidence on record that few days prior to the incident, the accused had started suspecting the character of his wife and he had doubt that deceased Raghunath Garje was having illicit relations with his wife. On 13th September, 2011 at about 10.30 to 11 a.m. Raghunath Garje was found injured. Two injures, one from his neck to ear and the other from ear

to skull were found on his person. Dr. Vinay Joglekar (PW-7) treated him first, as the deceased was brought in the hospital of Shri Seva Medical Foundation Shirwal. He has deposed that the deceased was unconscious and was not in a condition to give statement. He found two external injuries, one CLW on the face and other incised wound on the occipital region. Dr. Anil Balwant Shinde (PW-10) who performed postmortem on the body of Raghunath Garje has specifically mentioned that the cause of death is due to multiple injuries over head and injury nos. 2 and 3 which caused death were possible with the axe. Thus, the prosecution proved motive and also homicidal death of Raghunath Garje.

8. It is necessary to see the evidence on the point of incident which is tendered by the prosecution. The complainant Suresh Raghunath Garje has stated that he received information of assault from Prakash Ombale (PW-4) in the late morning when he was in the field. Prakash Ombale (PW-4) is examined and he told that Shubhangi, who is daughter-in-law of the brother of the accused came to his shop and told him to communicate about the incident of assault on Raghunath Garje to his son Suresh. No witness is examined by the prosecution on the point of actual assault. Nobody has seen the incident of assault. The only witness PW-2

Kaushalya @ Ratna Jagannath Sanas is material in respect of assault in the entire evidence. She is neighbour of accused Jagannath Shirgaonkar. She has deposed that on 13th September, 2011 at about 11.30 a.m. when she was drying the clothes, she saw accused Jagannath with axe after assaulting Raghunath Garje and she tried to take away axe from him. At that time, she heard Shubhangi saying loudly “Let Jagannath Shirgaonkar go and to come here”, so she went to the house of Raghunath Garje which was nearby. She saw Raghunath Garje in a pool of blood lying unconscious. He was injured and was shifted to hospital. The statement of Kaushalya was recorded on 14th September, 2011. She identified Article 7 (pyjama), Article 6 (shirt) and cap of the accused. Thus Kaushalya herself had not seen the actual assault. She saw the accused with axe. In the evidence she said that she saw the accused with axe and he had assaulted Raghunath Garje. It appears that she just drew inference that the accused was the assailant of Raghunath Garje. She deposed that she tried to take away axe from him. In her evidence, she did not state that axe was blood stained. If at all she had seen Jagannath immediately after assaulting Raghunath, then considering the nature of injuries that axe ought to have been blood stained. If the axe was blood stained, why she wanted to take away the axe from the accused. Her act of taking away axe would have been normal if she would

have seen accused actually assaulting the deceased and her intervention could have been found natural action stop assault. However, once she knew that the person has assaulted Raghunath and the axe is blood stained, no lady would try to take the axe. Moreover, the evidence of Kaushalya is not corroborated with the evidence of any witness or that circumstance. Her evidence becomes shaky if evidence of seizure of clothes of the accused and seizure of axe, i.e., weapon used in the assault is further scrutinized.

9. PW-5 Dattatraya Shanker Pawar and PW-11 Anil Dnyanoba Surve were examined as panchas on the point of arrest of the accused and seizure of articles from the accused at the time of his arrest. As per the case of the prosecution, the appellant/accused himself appeared at the police station on 13th September, 2011 at around 9.30 p.m. He was wearing pyjama, shirt and cap. The police seized those things under panchnama (Exhibit 34). The accused arrived at the police station along with axe which he had used in the offence. The said axe was seized by the police under panchnama (Exhibit 35). PW-5 Dattatraya Shanker Pawar and PW-11 Anil Dnyanoba Surve who are supposed to prove these panchanamas, did not support the case of the prosecution. They both said that nothing was seized in their

presence and no panchnama was actually prepared. As they were asked to sign, they simply signed. These panchnamas are proved through Investigating Officer (PW-12) Nivrutti Parvati Kumbhar. He has stated that he sent the articles, i.e., clothes of the accused and clothes of the deceased and axe to the Forensic Laboratory in order to obtain report of the Blood group. The C.A. report marked '73' is produced by the prosecution through the Investigating officer. The C.A. Report discloses that the shirt (Article 6), pyjama (Article 7) and axe (Article 9) belonged to the accused and Articles 1, 2 and 3 are clothes of the deceased. As per the report, the blood stains were found on these articles and they are of human being. The blood group found on Articles 1, 2 and 3 is "AB". Thus the blood group of the deceased is proved as "AB". However, the blood group of the blood stains found on the shirt and pyjama of accused (Articles 6 and 7) and axe (Article 9) is reported as inconclusive. While going through the CA report, we found that description of Exhibit 6 i.e. shirt is mentioned as follows:

"Exhibit (6) is stained with blood at places and appears to be washed"

Thus, C.A. has specifically observed that the shirt on the person of the accused which was seized under the panchnama was though blood stained, appeared to be washed. This observation appears very natural because as per the case of the prosecution, the accused surrendered before the police

on the same day at around 9.30 p.m. The incident has taken place at around 10.30 a.m. Thus, it was natural for the accused not to move around or not to remain with blood stained shirt throughout and he might have tried to wash the said shirt. However Exhibit 9, which is axe, is described as “Exhibit (9) is stained with blood on blade and handle”. Thus, it shows that the blade and handle of the axe was blood stained when sent to C.A. However, in the seizure panchnama, there is no mention that the seized axe was blood stained. Moreover, it cannot be expected that the accused from 10.30 a.m. to 9.30 p.m., i.e., nearly 11 hours will keep the axe with blood on it. If at all the accused has washed his shirt, then he was bound to wash the axe which was blood stained and used for the actual assault. If at all it was washed, the CA in the report must have mentioned that axe with blood stained but washed, however, CA did not report that it was washed but it reported that axe blood stained. Thus, it seems abnormal and creates doubt about the recovery of axe and the quality of the investigation.

10. Again referring to the evidence of Kaushalya, we observe that Kaushalya did not mention that the axe was blood stained. Without noticing axe blood stained, she jumped to the conclusion that Jagannath assaulted Raghunath. The observation of blood stains by Kaushalya was

necessary. Her evidence is not natural and hence does not inspire confidence in the mind. The conclusion of accused was the assailant of the deceased cannot be based on the surmises and unconnected facts. Under such circumstances, the prosecution has miserably failed to establish the case against the accused of murder punishable under section 302. Hence, we are of the view that the appreciation of the evidence of the learned Sessions Judge is not correct and therefore, we set aside the said judgment and order of conviction. We acquit the appellant/accused from the offences punishable under section 302 of IPC.

11. Appeal is hereby allowed.

12. Office to communicate this order to the concerned jail authorities and to the appellant, who is in jail.

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