

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 62 OF 2001

The State of Maharashtra
(through M.I.D.C. Police Station
Ahmednagar).

... **Appellant**

Versus

Sunil Sitaram Bankar,
Age: 22 yrs, Occ: Nil,
R/o Jeur, Tq. and Dist.
Ahmednagar.

... **Respondent**

Mr. R.V. Dhasalkar, A.P.P. for the Appellant/State.
Mr. Naseem R. Shaikh, Advocate for the Respondent.

**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 01.09.2017
DATE OF PRONOUNCING THE JUDGMENT : 12.10.2017**

...

JUDGMENT: (*Per Mangesh S. Patil, J.*)

. This is an appeal by the State against acquittal of the respondent of the offence punishable under Section 302, 504 of the Indian Penal Code by the learned Sessions Judge, Ahmednagar in Sessions Case No. 104 of 1998 by the judgment and order dated

06.11.2000.

2. For the sake of convenience the parties and the witnesses are referred to according to their status in the trial Court.

3. Shortly stated the prosecution case is that the families of the deceased and the accused have been staying in their respective farm houses situated in close proximity at village Jeur, Taluka and District Ahmednagar. There has been a long standing dispute between the two families over a right to a Tamarind tree located near the farm house of the deceased.

4. On the date of incident i.e. on 22.04.1998, in the afternoon there was some altercation between the father of the deceased Baburao (PW-5) on one hand and family members of the accused on the other. There was some use of force wherein few family members of the accused had manhandled Baburao (PW-5) as well as Baburao's maternal aunt Thakubai. Since, she had sustained injuries in the altercation, Baburao (PW-5) took her to Civil Hospital at Ahmednagar for medical treatment. After the treatment they returned to Jeur Bus Stand at about 07.30 pm. When they reached the Bus Stand at Jeur, the other son of Baburao (PW-5) by name Goraksh met them there and told that after the incident that

had taken place in the afternoon the accused tried to thrash tamarinds from the tree and when deceased Vinod alias Machindra tried to accost him the accused assaulted the deceased with knife and the deceased was moved to Civil Hospital at Ahmednagar in a jeep. Having heard the incident he sent back Thakubai to the farmhouse and he himself went to the Civil Hospital at Ahmednagar. He saw his son lying in unconscious condition and having sustained injuries on the right arm and right portion of the abdomen. Vinod alias Machindra was not in a position to talk.

5. According to the prosecution, Adinath (PW-1) who was present in the Civil Hospital disclosed the incident to Baburao (PW-5) and after Vinod alias Machindra was operated upon he went to the M.I.D.C. Police Station, Ahmednagar and lodged the complaint F.I.R. (exhibit-21). Offence was registered as Crime No. 57 of 1998 at 1.05 am. Unfortunately, Vinod alias Machindra succumbed to the injuries in the hospital during the same night. Consequently, offence was altered to Section 302 of the Indian Penal Code and P.S.I. Shete (PW-16) took over the investigation.

6. Inquest was drawn. Spot panchnama was conducted, during which samples of plain soil and soil stained with blood were collected. Kurta of Sangita (PW-2) smeared with blood was seized under a

panchnama. Similarly, the blood smeared clothes of Adinath (PW-1) were also seized. The clothes of deceased were also seized. Statements of witnesses were recorded. The accused was arrested on 24.04.1998.

7. It is the further case of the prosecution that during the course of investigation while being in custody of police the accused voluntarily disclosed about having hidden the knife. His statement was recorded in presence of panchas and accordingly he discovered the knife from the roof of his house. It was also seized under a panchnama. P.S.I. Shete (PW-16) forwarded all these articles for chemical analysis.

8. In the meanwhile, Dr. Patil (PW-11) conducted the post-mortem examination and noticed that there were as many as six wounds on the body which were sutured. There were internal injuries on the liver and right kidney. He opined that Vinod alias Machindra died due to cardio respiratory failure, due to haemorrhagic shock, due to rupture of liver and kidney.

9. The analytical report of the chemical analysis was received and after conclusion of the investigation, the accused was duly charge-sheeted.

10. The learned Sessions Judge after committal of the case

framed the charge for the offence punishable under Section 302 and 504 of the Indian Penal Code against the accused and he pleaded not guilty and he persuaded to hold the trial and finally acquitted him of the charge as mentioned herein-above.

11. We have heard the learned A.P.P. as also the learned Advocate for the accused *in extenso*. The learned A.P.P. has submitted that there are as many as three eye witnesses Adinath (PW-1), Sangita (PW-2) and Sanjay (PW-8). There is ample motive for the accused to commit the offence in the form of long standing dispute over the right to a Tamarind tree between the two families. The accused voluntarily discovered the knife. In spite of such ample evidence available on the record the learned Sessions Judge has refused to rely on it on untenable grounds. The learned A.P.P. also submitted that no plausible explanation could be discerned for deceased Vinod alias Machindra to have sustained so many injuries which turned out to be fatal. In substance the learned A.P.P. has submitted that the evidence available on record was more than enough to arrive at a conclusion attributing authorship of the crime to the accused.

12. As against this, the learned Advocate for the accused has supported the conclusion drawn by the learned Sessions Judge. He has

submitted that the learned Judge has correctly appreciated the ocular testimonies of the witnesses pitted as eye witnesses by the prosecution and has correctly assessed their intrinsic worth. The recovery of the weapon has turned out to be futile in as much as the prosecution could not establish any co-relation between the weapon and the injuries, since the injuries were all sutured when Dr. Patil (PW-11) conducted the post-mortem examination. There has been material contradictions and inconsistencies in the evidence of so called eye witnesses which are sufficient to discard their testimonies. All in all the prosecution has miserably failed to bring home clinching evidence. The conclusion drawn by the learned Sessions Judge being plausible one, cannot be interfered with.

13. It is necessary to note, at the outset that no dispute could be raised before the learned Sessions Judge and naturally the learned Advocate for the accused also has not led any emphasis as far as the cause of death of Vinod alias Machindra as being homicidal one. Independent of the testimonies of the witnesses, relying upon the opinion of the expert, Dr. Patil (PW-11) one can safely conclude that Vinod alias Machindra has died a homicidal death.

14. Obviously the crucial point that needs determination is as to

whether the authorship of the fatal injuries sustained by the deceased can be attributed to the accused.

15. So far as the aspect of motive is concerned, in view of the peculiar facts of the case, the long standing dispute between the two families over a right to the Tamarid tree, such previous animosity would indeed can be used both ways. It can be relied upon to attribute motive on the part of the accused but simultaneously it can also be used by the defence to attribute false implication. It is in these circumstances that the fact of such previous animosity will not be of any help.

16. In the peculiar facts and circumstances of the case, wherein the prosecution has been heavily banking upon the testimonies of three eye witnesses Adinath (PW-1), Sangita (PW-2) and Sanjay (PW-8), even otherwise the question of motive loses importance and the fate of the prosecution story would hinge on the authenticity and reliability of the testimonies of these witnesses.

17. As is mentioned above, according to the prosecution, these three witnesses Adinath (PW-1), Sangita (PW-2) and Sanjay (PW-8) were actually present at the spot when the incident was going on and they all have seen the accused stabbing Vinod alias Machindra under the

Tamarind tree. Adinath (PW-1) is the cousin of Baburao (PW-5), Sangita (PW-2) is the daughter of Baburao (PW-5) and is a sister of the deceased, whereas, Sanjay (PW-8) is stated to be their neighbour. Sanjay (PW-8) has stated that his land is about 200 to 250 feet away from the farmhouse of Baburao (PW-5). He heard commotion from the side of the disputed Tamarind tree and therefore he went to the spot and saw that Vinod alias Machindra had sustained injuries to his right arm and abdomen. He has then stated that Asha, Sangita (PW-2), Adinath (PW-1) as also the accused were present there. He has then stated that accused then went to his house and he himself went to the Civil Hospital in a jeep along with the deceased. He has stated that on the way, when he made inquiry he learnt about scuffle between the accused and Vinod alias Machindra and the latter having sustained injuries. The very fact that he was not present at the spot since inception and had rushed there after hearing commotion from a distance of at least 200 feet and he had seen the deceased in a injured condition clearly shows that he has no direct knowledge about the incident and his evidence cannot be relied upon to attribute authorship of the injuries to the accused. At the most his version that the accused was also present there can alone be said to be his personal knowledge. However, in all probabilities even such version does not carry the worth as is sought to be attached to it by the

prosecution. It is highly improbable and therefore unbelievable that a person like the accused who had stabbed the deceased with a knife would remain present at the spot, even for a moment and would calmly go back to his home that too in presence of so many persons and family members of the deceased. It is also improbable that family members of the deceased would have allowed the accused to just walk away from the spot after such gruesome incident. The learned Sessions Judge has correctly appreciated these facts and has rightly refused to rely upon this testimony of Sanjay (PW-8).

18. As regards the testimony of Adinath (PW-1) is concerned, he has stated that he had casually gone to the spot and saw that the accused was trashing Tamarinds from the tree. Deceased was standing below the tree, the deceased objected to such trashing, the accused came down from the tree and a scuffle ensued between the two. He caught hold of the accused and tried to separate them but the accused gave a jerk and released himself and then took out a knife and rushed towards the deceased and started stabbing him. He has then stated that Sangita (PW-2), Sanjay (PW-8) and Rajendra came there. He has also stated that the accused was saying that he would finish off the deceased. He has then stated about the injured deceased having been shifted to the

dispensary of one Dr. Pawar and then to the Civil Hospital in a jeep.

19. As far as the very presence of Adinath (PW-1) on the spot is concerned, without their being any reason it seems unlikely that a person like him who has no axe to grind would have casually gone to the disputed spot. In other words, no believable and plausible reason has been brought on record to justify his presence at the spot. In the absence of which presence of this witness on the spot during the incident itself is doubtful. The learned Sessions Judge has correctly appreciated this fact.

20. Besides Adinath (PW-1) has stated about accused having held the knife in his right hand and to have stabbed the deceased from front side. However, as can be seen from the medical evidence in the form of testimony of Dr. Patil (PW-11) and the post-mortem report, all the vital injuries sustained by the deceased were on the right side portion of the abdomen. In fact, similar is the evidence of Sangita (PW-2), who has also stated about accused having held the knife in his right hand and to have stabbed the deceased from front side. As has been rightly observed by the learned Sessions Judge and as has been rightly submitted by the learned Advocate for the accused before us, this version of both these witnesses Adinath (PW-1) and Sangita (PW-2) at

least as regards the manner in which the accused inflicted stabs on the deceased does not find corroboration in the medical evidence. As regards the multiple stab injuries sustained by the deceased are concerned, we shall advert to it a little later. Suffice for the purpose to note that ocular version of Adinath (PW-1) and Sangita (PW-2) as regards the actual assault by the accused with a knife in his right hand is certainly not compatible with the portion of the body over which the injuries were found.

21. This takes us to the conduct of Adinath (PW-1) and as to whether it can be said to be befitting a person who happens to be a near relative of the deceased. According to him he had seen the incident and not only that but had tried to separate the accused and the deceased when the scuffle had ensued. He has admitted not to have disclosed this incident to Sanjay (PW-8) who all the while accompanied the deceased in injured condition from the spot to the dispensary of Dr. Pawar and from there to the Civil Hospital. In the normal course, a person like him would immediately narrate the incident to whomsoever accompanying such an injured person. Not only that but he also did not inform the police at the police outpost in the village itself. He also did not try to accost the accused after the incident and had simply remained a silent spectator

allowing the accused to walk away peacefully. An ordinary man in this place would have firstly tried to accost the assailant, secondly would have narrated the incident to anybody and everybody on the way to the hospital and thirdly, would have certainly informed the police or at least would have made an attempt to somehow reach the information to police. However, Adinath (PW-1) has not followed any of such course and coupled with the fact that there is no plausible explanation about his presence at the spot, his testimony certainly is shrouded with doubt. The learned Sessions Judge has correctly emphasized these aspects and has rightly refused to treat his testimony as reliable one.

22. Similar is the case with the third eye witness Sangita (PW-2) who incidentally is the real sister of the deceased. She has stated that after returning home from college at 6.30 pm, at about 7.00 pm while she was changing clothes, she heard the sound of quarrel from the side of the disputed Tamarind tree. She saw that her uncle Adinath (PW-1) and sister-in-law Asha rushing towards the side of commotion. She also followed them and saw that a quarrel was going on between the deceased and the accused. They were exchanging abuses and then the accused took out a knife from his vest and inflicted four to five blows on the deceased. She has then stated that Sanjay (PW-8), Rajendra and

other members of her family were present there. Asha tried to catch hold the hand of the accused but he got himself released and ran away. However, during her cross-examination she has admitted not to have narrated the incident to anybody, till her statement was recorded by police on the next day. As is observed above, even she has come with a version about the accused having held the knife in his right hand and having inflicted blows from front side which version is incompatible with the injuries found on the person of the deceased. She has stated that when she was coming home after finishing the college at about 6.30 pm, she had seen Adinath (PW-1) talking to the deceased under the Tamarind tree which version is clearly and conspicuously absent in the testimony of Adinath (PW-1) who has stated to have gone there casually. He has also stated that after he went to the spot he saw that the quarrel was going on between the deceased and the accused, meaning thereby that he was not present there since before the quarrel started. This version clearly belies Sangita's statement that he was present at the spot when she was returning home. Again her conduct in keeping mum and not disclosing the incident to anybody also is incompatible with the normal human conduct. Though Adinath (PW-1) has stated that brother of the deceased by name Goraksh had come to the dispensary of Dr. Pawar within fifteen minutes after they took deceased to the hospital, Sangita

(PW-2) has denied that Goraksh had come to the dispensary of Dr. Pawar. Considering the fact that Goraksh happens to be the real brother of the deceased and Sangita (PW-2), his conduct as narrated by Sangita (PW-2) is also not compatible with the behaviour of a normal human being.

23. Interestingly, the prosecution has neither examined Goraksh or Asha, who according to Sangita (PW-2) had tried to catch hold the accused after the occurrence of the incident. All these facts and circumstances clearly indicate that testimonies of all the three prime witnesses pitted by the prosecution as eye witnesses are unbelievable and therefore unreliable. The learned Sessions Judge has meticulously considered their evidence and has rightly refused to rely upon them. Resultantly, the very foundation of the prosecution falls to the ground and the only circumstances now that remain to be considered are isolated circumstances like discovery of the weapon by the accused admissible under Section 27 of the Evidence Act and the report of the chemical analysis.

24. Even as regards these isolated circumstances, they do not clinchingly support the prosecution. As is observed above, Dr. Patil (PW-11) had no opportunity to see the actual wounds in as much as all of

those were sutured. According to the prosecution, immediately after the incident the deceased was initially shifted to the dispensary of Dr. Pawar, however, Dr. Pawar has not been examined and no injury certificate has been obtained from him and in all probabilities he having sutured the injuries he could have been the best witness to have opined about the particulars of the injuries. In the absence of such evidence as to the nature and particulars of the injuries, even if it is believed for the sake of arguments that the accused did voluntarily discover the knife, the prosecution has utterly failed to bring about any nexus between the injuries and the knife seized.

25. All in all, the evidence led by the prosecution is far from satisfactory and we find no hesitation in concluding that the learned Sessions Judge has correctly scanned the evidence brought by the prosecution and has reached a plausible conclusion in acquitting the accused. We find no reason much less sufficient enough to arrive at any different conclusion. The appeal is dismissed. The bail bonds are cancelled.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]