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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.223 OF 2012.

Santosh Ashok Chavan	]	
age: 21 years, Occn. Painter	]	
r/at : Indira Nagar, B-33, Room No.12	]	<u>Appellant</u>
Bibvewadi, Pune.	]	Original
	]	Accused No.1
Presently lodged in Yerwada Central Jail	]	
Pune	]	

V/s.

The State of Maharashtra	]	
At the instance of Haveli Police Station	]	<u>Respondent</u>
Pune	]	Complainant

WITH
CRIMINAL APPEAL NO.316 OF 2014

Sunil @ Pintya Bapu Khandale	]	
age: 28 years, Occn. Labour	]	
r/o Sargam Chawl, Appar Super	]	<u>Appellant</u>
Indiranagar, Bibvewadi	]	Original
(confined as Convict No.C.15704	]	Accused No.2.
Yerwada Central Prison, Yerwada,Pune	]	

V/s.

The State of Maharashtra	]	
At the instance of Haveli Police Station	]	<u>Respondent</u>
Pune	]	Complainant

Mr. Aniket Nikam, for the appellant in Criminal Appeal No.223 of 2012.

Mr. Daulat G. Khamkar, for Appellant appellant in Criminal Appeal No.316 of 2014.

Mrs. G. P. Mulekar, A.P.P., for the Respondent-State in both appeals.

**CORAM : SMT. V. K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 18TH SEPTEMBER, 2017.

ORAL JUDGMENT : [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. These two separate appeals are preferred by original accused Nos. 1 and 2, challenging the judgment and order dated 20th March, 2010, of Additional Sessions Judge, Pune, in Sessions Case No.621 of 2005, thereby convicting them for the offence punishable under Section 302 read with 34 of the Indian penal Code and sentencing to imprisonment for life and fine of Rs.5000/- each in default to suffer R.I. for two months.

2. Brief facts of the prosecution case can be stated as under:-

Deceased Ashok was the elder brother of P.W.7 Bajirao Salve. Ashok was dealing Real Estate Business. Accused Nos. 1 and 2 used to work with Ashok in the said business. On account of certain disputes relating to the business, the relations between Ashok and accused No.1 Santosh were strained. Hence P.W.7 Bajirao told Ashok not to keep contact with accused No.1 Santosh.

3. The incident giving rise to the prosecution case, took place on the night intervening between 3rd and 4th August, 2005. On that night P.W.7 Bajirao had slept in his house. At about 2.30 a.m. in the night, both the accused came to his house and asked him to come outside the house. Accordingly, he came outside the house. They told him to wake up his brother Ashok also. However, P.W.7 Bajirao told them not to wake up Ashok and matter can be looked into in the morning. However, both the accused did not listen to P.W.7 Bajirao and went to the house of Ashok, woke him up, took him alongwith them and proceeded towards Mari-ai temple. Out of suspicion, P.W.7 Bajirao also followed them, as the accused were carrying weapon like Sattur in their hands. After some distance, he saw that both the accused started assaulting Ashok with Sattur and Ashok was shouting for help. P.W.7 Bajirao rushed to the help of Ashok. Ashok fell down with injuries on his

person. Hearing his shouts, P.W.3 Narayan also came there. Then P.W.7 Bajirao took Ashok to Satyanand Hospital and from there to Sasson Hospital. Ashok was, there, declared dead on admission. P.W.7 Bajirao, then went to Haveli Police Station and lodged complaint against the accused. On his complaint Exh.85, C.R.No.234 of 2005 came to be registered against accused.

4. The investigation of the crime was entrusted to P.W.11 Police Inspector -Patil. He went to the spot of incident and made panchnama of the existing situation at the scene of crime vide Exh.66 in the presence of Panch P.W.1 Manoj Bhingardeive. From the spot, he collected soil mixed with blood, one shoe of left leg, one pair of sandal etc, alongwith the motorcycle of Yamaha Company. On the next day, P.W.11- PI Patil seized the clothes of the deceased under panchnama. During police custody, on 7.8.2005, accused No.1 Santosh gave disclosing statement which led to the recovery of weapon of assault Sattur and his blood stained clothes vide Exh.114. Further at the instance of accused No.2 also, weapon of assault Sattur and his blood stained clothes came to be seized under panchnama Exh.82, in the presence of P.W.5 panch Yogesh. P.W.11 PI Patil, has then sent all these seized articles to Chemical Analyzer. The Chemical Analyzer's

reports are at Exh.118 to 122. He has also collected the postmortem report of the deceased from Sasson hospital and on completion of due investigation, filed charge sheet in the Court of Judicial Magistrate First Class, Court No.7, Pune, against the accused.

5. On committal of the case to the Sessions Court at Pune, the trial Court framed charge against the accused vide Exh.2. Both the accused pleaded not guilty and claimed trial raising defence of denial and false implication.

6. In support of its case, prosecution examined in all 11 witnesses and on appreciation of their evidence, the trial Court was pleased to hold the guilt of both the accused to be proved beyond reasonable doubt and convicted and sentenced them as aforesaid.

7. In this appeal, we heard learned counsels for both the appellants, who have challenged the judgment of the trial Court, on the ground that the evidence of eye witnesses in this case is not consistent, reliable and cogent.

8. Per contra, learned APP for the State has supported the judgment for the reasons stated therein.

9. In the light of these rival submissions, made by leaned counsels for both the appellants and learned APP and after giving our anxious consideration to the evidence adduced on record, we are of the considered view that the prosecution in this case has succeeded in proving that accused Nos. 1 and 2 have caused death of Ashok by stabbing him to brutal assault with Sattur. The reasons for our finding are given herein under.

10. The prosecution case is based on the evidence of two eye witnesses. The first is P.W.7 Bajirao- the brother of deceased Ashok, who has lodged complaint. His evidence, as stated above, goes to show that Ashok was his elder brother and accused Nos. 1 and 2 were working with Ashok in his real estate business. However, there were disputes between them and as a result the relations between Ashok and the accused were strained. He even advised Ashok not to keep relations with the accused. According to his evidence, on the night between 3.8.2005 and 4.8.2005 at about 2.30 a.m, while he was sleeping in the house, accused persons came there, woke him up and told him to wake up Ashok

also on the count that some boys from Upper Indira Nagar have assaulted the brother of accused No.1 Santosh. This witness tried to persuade the accused persons not to wake up up Ashok. However, they did not listen to him. They went to the house of Ashok and woke up him and took him to towards Mari Aai temple side. Hence, on apprehension that accused may take deceased to upper Indira Nagar and there would be quarrels and fights, as accused persons were carrying weapons like Sattur in their hands, this witness has followed the accused and Ashok. When they reached near Mari Aai temple, he saw that both the accused started assaulting Ashok with weapons in their hands. Ashok was shouting for help and he fell down in injured condition. Thereupon accused No.1 Santosh ran towards Laxmi Nagar locality; whereas accused No.2 ran towards Kakade Nagar locality. Hearing the shouts of Ashok, P.W.1 Manoj and P.W.3 Narayan also rushed there. Then Ashok was taken in injured condition to hospital, where he was declared dead.

11. This evidence of P.W.7 Bajirao is getting complete support and corroboration from the complaint exh.85, which is lodged immediately on the same night. At about 5.45 a.m. offence is registered on the said complaint.

12. There is also corroboration to this evidence of P.W.7, Bajirao, from the evidence of P.W.3 Narayan, who is having Video Center just in front of the house of deceased. According to his evidence also, on that night at about 3.15 a.m., he saw deceased and accused persons proceeding towards Mari Aai temple and after some distance, they assaulted the deceased with weapons like Sattur in their hands. Ashok, then started shouting for help to save him. Thereupon accused ran from the spot. Then P.W.7 Bajirao who was present there took Ashok to the hospital.

13. Further, there is also evidence of P.W.1 Manoj, who had also rushed to the spot after hearing shouts of Ashok and found him lying in a pool of blood. He has deposed about the presence of P.W.3 Narayan and P.W.7 Bajirao at the spot, who had then taken the injured Ashok to the Hospital.

14. The prosecution has also relied upon the evidence of P.W.2 Aiju to prove that after assault, accused Nos. 1 and 2 had come to his house for shelter. However, seeing that accused No.1 was having Sattur in his hand and his clothes were blood stained, he refused to allow them to enter in his house. Hence they went away.

15. If at all any further corroboration is required to this evidence of eye witnesses, there is evidence of P.W.5 panch Yogesh and P.W.11 PI Patil, to prove that at the instance of accused No.2 Sattur was recovered alongwith his blood stained clothes. The evidence of P.W.1 PI Patil also proves recovery of sattur at the instance of accused No.1 Santosh. The Chemical Analyzer's reports prove that the clothes of the accused and the Satturs recovered at their instance, were found to be having human blood stains. Though the reports show that blood groups could not be ascertained, as per settled law, it does not affect the prosecution case as accused persons in their statement recorded under Section 313 of the Code of Criminal Procedure, have not offered any explanation as to presence of these human blood stains on their clothes.

16. Lastly there is also evidence of P.W.4 Dr.Ramkrishna Bhusale, who had conducted autopsy on the dead body of Ashok and found as many as 10 external injuries and two internal injuries; which are as follows :-

I. External injuries.

1. Stab wound on left flank of size 12 cm x 1 cm x 7 cm.
2. Cut and lacerated wound on hypothenar eminence of left palm of size 1 x 0.2 cm.
3. Laceration 3 x 1 on posterior aspect of left wrist.
4. C.L.W. on left lobe of ear 1.5 x 0.5 cm.
5. CLW which is C shaped and 6 cm in length on left fronto parietal region 6 cm above left ear.
6. CLW on right parietal region which is C-shaped and 8 cm in length.
7. Stab wound on right hip lateral size 6 x 2 cm x 3 cm.
8. Stab wound on left hip posterior aspect in size 3 x 1 x 1 cm.
9. CLW on right ring finger 3 x 0.5 cm.
10. Abrasion on left temporal region 0.5 cm in diameter.

II. Internal injuries.

1. Small haematoma of 1 cm in diameter on left parietal region and brain was edematous.

2. Small intestine shows haematoma small intestine.
Mesentary shows haematoma of 2 x 2 cm.
Left para spinal muscle in lumbar region ruptured.

17. According to his evidence, the cause of the death was haemorrhage shock as a result of multiple stab injuries on head, abdomen and on different parts of body.

18. Though learned counsel for appellants have challenged the evidence of eye witnesses on account of certain inconsistencies in their testimony, the law is fairly well settled that the minor discrepancies do not affect the prosecution case, if the prosecution has succeeded in proving substratum of the incident. Here in the case, absolutely nothing is brought on record to show as to why these prosecution witnesses are deposing falsely against the accused.

19. Though the submission is advanced that no independent witness is examined, having regard to the time of the incident, which has taken place in the night at 2.30 to 3.00 a.m., the possibility of any other witness being present has to be ruled out. Moreover, it is well settled that the close relatives of the deceased are the last persons to implicate an innocent person and

allow the real culprit to escape.

20. An attempt is made to submit that immediately after the incident, first information was given by P.W.7 Bajirao to the police at Hospital vide "Article-D" and in that information the name of accused No.2 is not appearing. It is urged that Article-D should have been treated by the trial Court as F.I.R., as it discloses commission of non cognizable offence and it is first in time. However, in our considered opinion, as the said information is cryptic one and it was merely for the purpose of admitting injured Ashok in the hospital, it cannot be treated as F.I.R. Secondly in that information also, it is categorically stated that accused No.1 has assaulted Ashok alongwith his associate. Then there is evidence of eye witness and P.W.7 Bajirao, who has seen both the accused persons assaulting the deceased. There is also evidence of P.W.3 Narayan and P.W.2 Aiju to that effect, leaving no manner of doubt about involvement of accused No.2 in the incident. Further, as stated above, the recovery of the blood stained Sattur and clothes is also at the instance of accused No.2, which is proved through evidence of independent panch witness P.W.5 Yogesh and P.W.11 PI Patil.

21. In our considered opinion, therefore, the prosecution has succeeded in proving its case against both the accused persons beyond reasonable doubt. The appeals, therefore, hold no merit. Hence both the appeals stand dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]