

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.702 OF 2012

BANDU RAMU PHADVALE

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.A.G.Toraskar, Advocate Appointed for the Appellant.

Mr.H.J.Dedhia, APP for the Respondent - State.

**CORAM : V.K.TAHILRAMANI, J. &
A. M. BADAR, J.**

DATE : 27th FEBRUARY 2017.

JUDGMENT : (PER : A. M. BADAR, J.)

1 By this appeal, the appellant / accused is challenging the judgment and order dated 16th March 2011 passed by the learned Extra Joint Ad-hoc Additional Sessions Judge, Thane, thereby convicting him of the offence punishable under Section

302 of the IPC and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default, to undergo further simple imprisonment for 1 year.

2 Briefly stated, facts leading to the prosecution of the appellant / accused are thus :

Appellant / accused Bandu Phadvale is cousin of Vijay Chintaman Phadvale (since deceased). They both were residents of Village Uprale – Vaghonpada, in Vikramgad Taluka of Thane District. The incident of commission of murder of Vijay Phadvale took place on 1st March 2010 at Village Uprale, Vaghonpada. It was the day of festival of holi. Raju Lakhma Bhivra (PW1), who is brother of Champa Phadvale – mother of deceased Vijay Phadvale, visited Village Vaghonpada for meeting his nephew Vijay Phadvale (since deceased) and Vinayak Phadvale. After spending some time at Village Vaghonpada, informant Raju Bhivra (PW1) left to his Village Kombadpada.

3 Because of festival of Holi, a goat was sacrificed at Village Vaghonpada. Thereafter, goat meat was distributed amongst villagers. Vijay Phadvale (since deceased) took his share of goat meat and returned to his house, where he was staying with his wife Ranjana (PW2) and son Umesh. In the afternoon, according to prosecution case, appellant / accused Bandu Phadvale took deceased Vijay Phadvale with him to his house. There was dispute between both cousins over issue of land. According to prosecution case, in the house of appellant / accused Bandu Phadvale, there was quarrel between Bandu Phadvale and deceased Vijay Phadvale. During the course of that quarrel, appellant / accused took an axe and gave blows thereof on neck and backside of deceased Vijay Phadvale. Injured Vijay Phadvale fell in the front room of the house of appellant / accused, bleeding profusely. The incident, according to prosecution case, was witnessed by PW2 Ranjana Phadvale – wife of deceased Vijay Phadvale. Appellant / accused ran away from the spot with an axe but villagers chased him. He was arrested and handed over to

police. Villagers including PW6 Vasant Vaijal took injured Vijay Phadvale to the hospital at Jawahar. The Medical Officer referred him to a hospital at Thane, but while proceeding towards Thane, Vijay Phadvale succumbed to injuries, and therefore, he was taken to a hospital at Wada, where he was declared dead.

4 Upon being informed about the incident, PW1 Raju Bhivra, uncle of deceased Vijay Phadvale, lodged report Exhibit 12, and accordingly, Crime No.I-25 of 2010 for the offence punishable under Section 302 of the IPC came to be registered against appellant / accused at Police Station Vikramgad, District Thane.

5 During the course of investigation, the spot was inspected. Half pant of appellant / accused came to be seized. Weapon of offence i.e. an axe came to be seized. Clothes of deceased Vijay Phadvale came to be seized. Earth mixed with blood came to be seized from the spot of the incident. Statement of witnesses came to be recorded and on completion of

investigation, appellant / accused came to be charge-sheeted for the offence punishable under Section 302 of the IPC.

6 After committal of case and on conducting due trial, the learned Extra Joint Ad-hoc Additional Sessions Judge, Thane, vide judgment and order dated 16th March 2011 in Sessions Case No.262 of 2010 was pleased to convict appellant / accused of the offence punishable under Section 302 of the IPC and he is sentenced accordingly as indicated in the opening paragraph of this judgment.

7 We have heard the learned advocate appearing for appellant / accused. By taking us through the entire evidence adduced by the prosecution, he vehemently argued that as seen from evidence of PW2 Ranjana, she visited the spot of the incident upon being informed by her son Umesh. The prosecution has not examined said Umesh in order to prove the guilt of the accused, and therefore, the accused is entitled for benefit of doubt. In submission of the learned advocate for appellant / accused,

according to prosecution case, assault on deceased Vijay Phadvale took place at about 2 p.m. on 1st March 2010, whereas, he died at about 9 p.m. of that day. He was very much alive during this period and had timely medical treatment been given to Vijay Phadvale, his death would have been averted. Therefore, according to learned advocate for appellant / accused, death of Vijay Phadvale is due to negligence by the prosecuting party in giving necessary medical treatment to him. It is further argued that though according to prosecution case, the incident in question took place because of land dispute between appellant / accused and deceased Vijay Phadvale, motive of the crime in question is not proved. The Report of Chemical Analysis of seized articles is not supporting the case of prosecution as group of the blood allegedly found on the seized half pant of appellant / accused could not be determined. Weapon of the offence i.e. an axe has not been identified by prosecution witnesses. It is further argued that, infact, Vinayak Phadvale, who is real brother of deceased Vijay Phadvale, had murdered Vijay Phadvale and appellant / accused is falsely implicated in the crime in question.

8 The learned APP supported the impugned judgment by contending that by adducing clear and cogent evidence of ten prosecution witnesses, the prosecution has established the charge for the offence punishable under Section 302 of the IPC leveled against appellant / accused.

9 We have carefully considered the rival submissions and also perused record and proceedings. For the reasons set out in subsequent paragraphs, we see no merit in the instant appeal.

10 As the Charge leveled against appellant / accused is for the offence punishable under Section 302 of the IPC, with an allegation that on 1st March 2010 at Village Vaghonpada, he committed murder of Vijay Phadvale by intentionally and knowingly causing his death, let us first examine whether Vijay Phadvale died homicidal death on 1st March 2010. The factum of homicidal death of Vijay Phadvale is not in much dispute. The defence has admitted several documents pointing out homicidal death of Vijay Phadvale. Exhibit 10 is the certificate of cause of

death of Vijay Phadvale. This is a document admitted by defence. It shows that Vijay Phadvale died due to haemorrhagic shock due to external bleeding due to neck injury. Exhibit 12 is the report of postmortem examination of dead body of Vijay Phadvale. This is also an admitted document. The prosecution has rightly chosen to examine Autopsy Surgeon PW4 Dr.Vasant More in order to bring on record the fact that injuries found on dead body of Vijay Phadvale were sufficient in the ordinary course of nature to cause his death. Evidence of this Autopsy Surgeon shows that dead body of Vijay Phadvale was having following external injuries :

- i) Incised lacerated wound of size 9 cm x 5 cm x 7 cm deep extending midline of neck anteriorly upto posterior aspect of left sterno cleidomastoid muscle in horizontal direction, then downward reaching to the lower end with clean cut skin margins, skin flat open outward and downward, muscle, vessels, arteries and nerves cut and separated extending upto left lateral horn of C7 vertebra lower border and upper border of thoracic 1 vertebra, superior

aspect extending medial body of vertebra. Fracture seen upto spinal cord at thorasic 1 vertebra level.

ii) Incised lacerated wound of size 5 cm x 5 cm, muscle deep in semi circular shape, skin flap seen outward and downward, clean cut skin edges seen. Reddish colour seen over back middle region.

iii) Imprint abrasion over left maxillary region 1 cm x 1 cm, reddish colour seen.

iv) Imprint abrasion over left suprascapula region 4 cm x 2 ½ cm reddish blackish colour seen.

Column No.18 – Vertebra C7 and thorasic 1 fracture seen.

11 The Autopsy Surgeon reiterated the cause of death of Vijay Phadvale by stating that he died because of haemorrhagic shock due to external bleeding due to neck injury caused by ante mortem wound. As per version of Autopsy Surgeon, injuries found on the dead body were possibly caused by muddemal Article No.2 – an axe and those were sufficient in the ordinary

course of nature to cause death of a human being. There is nothing in cross-examination of PW4 Dr.Vasant More, Medical Officer of Rural Hospital, Wada, to disbelieve his version which is otherwise corroborated by undisputed contemporaneous document i.e. postmortem report at Exhibit 12. With this, we conclude that the prosecution has established that Vijay Phadvale died homicidal death on 1st March 2010.

12 Now let us examine whether it is proved that it was appellant / accused who on 1st March 2010 intentionally and knowingly caused death of Vijay Phadvale by assaulting him by means of an axe.

13 PW2 Ranjana Vijay Phadvale is widow of deceased Vijay Phadvale. She is an eye witness to the incident of assault on her deceased husband Vijay Phadvale. It is in her evidence that in the afternoon, appellant / accused took her husband Vijay Phadvale with him. Her son Umesh also accompanied appellant / accused and her husband Vijay Phadvale. As per version of PW2

Ranjana, her son Umesh informed her that there is a quarrel between appellant / accused and her husband Vijay Phadvale, and therefore, she rushed to the house of appellant / accused. It is in evidence of PW2 Ranjana Phadvale that appellant / accused gave blows of an axe to her husband Vijay Phadvale on neck and back side of her husband Vijay Phadvale and then ran away with the axe. She further stated that her husband fell down in the house of appellant / accused, bleeding profusely. PW2 Ranjana Phadvale further stated that then she took her injured husband Vijay Phadvale to the hospital at Jawahar and the doctor at the said hospital referred Vijay Phadvale to the hospital at Thane. However, Vijay Phadvale died on the way at Village Wada. This witness denied the suggestion that she had not actually seen the incident in question. This witness further denied suggestion that her brother-in-law Vinayak Phadvale along with other persons killed Vijay Phadvale by beating Vijay Phadvale.

14 Careful scrutiny of evidence of PW2 Ranjana Phadvale as such goes to show that she is infact an eye witness to the

incident of actual assault, as she had rushed to the spot of the incident upon being informed about the quarrel between appellant / accused and her husband Vijay Phadvale at the house of appellant / accused by her son Umesh. There is nothing in her cross-examination to throw doubt on her clear, cogent and consistent version. One may argue that being the widow of deceased Vijay Phadvale, she is bound to be an interested witness and therefore her evidence needs to be discarded. However, it is settled that evidence of an interested witness or a witness inimically disposed towards the accused cannot be excluded from consideration outright. Being the widow of deceased Vijay Phadvale, PW2 Ranjana would not shield the real culprit and rope in innocent person. In a case of single accused and single victim, theory of false implication does not deserve a moment's consideration. When evidence of PW2 Ranjana is clear and cogent and when no reasonable grounds are pointed out to discard her testimony, her version needs to be accepted. However, before giving final verdict on the issue involved in the instant appeal, let us examine whether the evidence of PW2 Ranjana Phadvale is

gaining corroboration from other evidence adduced by the prosecution.

15 PW3 Sanju Phadvale is a panch witness apart from a witness to the post event happenings, he being a resident of Village Uprale, Vaghonpada, where the incident of murder took place. He had accompanied appellant / accused, deceased Vijay Phadvale and others in the ceremony of sacrificing goat on the day of the incident i.e. 1st March 2010, when villagers celebrated festival of holi. As per his version, at about 2.00 p.m. of 1st March 2010, he heard shouts from the house of appellant / accused and therefore rushed to the house of appellant / accused. This witness saw the appellant / accused running away while holding an axe and other persons chasing him. PW3 Sanju Phadvale stated in his evidence that then he saw deceased Vijay Phadvale lying in a pool of blood in the house of appellant / accused. This witness accompanied Vijay Phadvale to the hospital at Vikramgad. PW3 Sanju was then called on the next day i.e. on 2nd March 2010 by police to act as a panch witness. In presence of this witness,

police seized half pant of appellant / accused vide seizure panchnama Exhibit 15. This seizure panchnama is also a document which is admitted by appellant / accused. From cross-examination of this witness, it is brought on record that there was a quarrel between appellant / accused and the deceased Vijay Phadvale. It is also brought on record from the version of this witness that deceased Vijay Phadvale was lying in an injured condition inside the house of appellant / accused. With this material brought on record from cross-examination of PW3 Sanju, case of prosecution is infact strengthen. Motive of the crime is brought on record in the cross-examination. There is nothing to even remotely infer that PW3 Sanju Phadvale is not a witness of the truth. The fact that this witness has seen appellant / accused running away from his house while holding an axe and that deceased Vijay Phadvale was lying in an injured condition inside the house of appellant / accused, corroborates version of PW2 Ranjana Phadvale.

16 PW8 Sangita Shelke and PW9 Ananta Parad are villagers of Village Uprale – Vaghonpada. Congruous evidence of both these witnesses shows that in the afternoon of the festival of holi, they heard shouts from house of appellant / accused, and therefore, both of them rushed there. Both these witnesses unanimously deposed that they saw appellant / accused running away with an axe in his hand. Both these witnesses saw deceased Vijay Phadvale lying inside the house of appellant / accused in an injured condition, bleeding profusely from the neck and back.

17 Cross-examination of both these witnesses is on similar lines. It is brought on record from cross-examination of these witnesses that while running away from the spot, appellant / accused was wearing a half pant. It is further brought on record from cross-examination of PW8 Sangita Shelke that appellant / accused was having a quarrel with deceased Vijay Phadvale on account of dispute over the land. This points out the motive with the appellant / accused. Except this, there is nothing in cross-examination of both these witnesses. Ultimately, as seen from the

evidence on record that appellant / accused came to be arrested on the very same day and at that time, he was found to be wearing only a half pant. His arrest panchnama Exhibit 39 is a document admitted by appellant / accused. Exhibit 15 is the seizure panchnama of half pant of appellant / accused. This is also a document which is not disputed. These contemporaneous documents show that PW8 Sangita Shelke and PW9 Ananta Parad are witnesses of the truth. Their evidence corroborates version of PW2 Ranjana Phadvale, who had disclosed the incident of assault on her husband by appellant / accused and then appellant / accused running away from the spot with the weapon of offence i.e. an axe. It is, thus, seen that, version of PW2 Ranjana Phadvale is gaining full corroboration from clear, consistent and trustworthy evidence of PW3 Sanju Phadvale, PW8 Sangita Shelke and PW9 Anant Parad who are natural witnesses to the post event happenings.

18 It is argued that Umesh – son of the deceased Vijay Phadvale and PW2 Ranjana Phadvale, who accompanied deceased

Vijay Phadvale to the house of appellant / accused is not examined and therefore a reasonable doubt creeps in the prosecution case. This submission deserves rejection because under the Indian Evidence Act trustworthy evidence given by a single witness would be enough to convict an accused person, whereas, evidence given by a dozen of witnesses which is not trustworthy would not be enough to sustain the convict. Moreover, non-examination of a witness who may be available with the prosecution, cannot be a ritualistic formula to discard evidence of trustworthy witnesses. Non-examination of material witness assumes importance only if the available evidence is unworthy of reliance. In the case in hand, we see no reason to disbelieve version of PW2 Ranjana Phadvale, PW3 Sanju Phadvale, PW8 Sangita Shelke and PW9 Ananta Parad, and therefore, non-examination of Umesh does not assume any importance.

19 The next incriminating circumstance brought on record by the prosecution is of recovery of a blood stained axe at

the instance of appellant / accused. PW7 Sandeep Phadvale is a panch witness to the confessional statement of appellant / accused and the consequent recovery of a blood stained axe. The Memorandum Statement of appellant / accused was recorded by PW10 Appasaheb Kharade, P.S.I., which led to the recovery of an axe. Evidence of both these witnesses goes to show that on 2nd March 2010, while appellant / accused was in police custody, he made a voluntary disclosure statement to the effect that he had kept an axe concealed beneath a mango tree near his house and he will recover the same. Evidence of both these witnesses further shows that then appellant / accused led them to the mango tree in the vicinity of his house and took out an axe from beneath the mango tree situated in the thicket. Evidence of PW10 Appasaheb Kharade, P.S.I., shows that the said axe was stained with blood. Except suggestion which both these witnesses denied, there is nothing in cross-examination of both these witnesses to conclude that the disclosure statement was not voluntarily made and no recovery was effected in pursuant to the said statement. On the contrary, contemporaneous documents i.e. Memorandum

Statement at Exhibit 35 and Recovery Panchnama at Exhibit 36 go to show that at the instance of appellant / accused an axe stained with blood came to be seized and after seizure it was duly sealed. With forwarding letter at Exhibit 18 (admitted document) this axe was sent for Chemical Analysis and the report of Chemical Analysis at Exhibit 59 goes to show that the axe seized at the instance of appellant / accused was stained with human blood. As such, this evidence incriminates appellant / accused in the crime in question. Similarly, seized half pant of appellant / accused was also sent for Chemical Analysis vide forwarding letter at Exhibit 18 and the Chemical Analysis Report at Exhibit 59 shows that seized half pant of appellant / accused was stained with human blood. Group of blood found on seized axe and half pant of appellant / accused could not be determined in the Chemical Analysis, but this aspect loses importance because the blood found thereon was human blood. Seized axe was identified by PW8 Sangita Shelke, PW9 Ananta Parad as well as PW10 Appasaheb Kharade, P.S.I. Therefore, its non-identification by PW3 Sanju Phadvale does not cast a shadow of doubt on the prosecution case.

20 The spot of incident was inspected by PW10 Appasaheb Kharade, P.S.I. with PW5 Arun Shelke. Evidence of both these witnesses shows that the incident took place in the front room of the house of appellant / accused. Exhibit 31 is the spot panchnama proved by both these witnesses. Evidence of both these witnesses as well as the the spot panchnama shows that there was a pool of blood in front room of the house of appellant / accused. The blood found on the spot was scrapped and seized vide spot panchnama Exhibit 31. The Chemical Analysis Report at Exhibit 59 shows that the seized earth from the front room of appellant / accused was containing human blood. It is, thus, clear that forensic evidence supports the prosecution case.

21 Though it is argued that the prosecution has not proved the motive of the crime in question, we see no merit in this contention. From cross-examination of prosecution witnesses including PW8 Sangita Shelke and PW10 Appasaheb Kharade, appellant / accused has brought on record that there was dispute between him and deceased Vijay Phadvale over the land. PW2

Ranjana Phadvale is the eye witness to the incident of assault by an axe on deceased Vijay Phadvale. The motive may be considered as a circumstance which is relevant for assessing the evidence, but motive loses all its importance in a case where direct evidence of eye witness is available. This is so because, even if there may be a very strong motive for the accused to commit a crime, but he cannot be convicted if evidence of witnesses is not convincing, and in similar way, if there is no apparent motive but evidence of eye witnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.

22 Even if the assault may be in the afternoon and deceased Vijay Phadvale might have died at about 9.00 p.m. of 1st March 2010, that by itself cannot exonerate appellant / accused from the offence punishable under Section 302 of the IPC, with a reason that the death was due to negligence in not providing proper medical treatment to deceased Vijay Phadvale. Explanation 2 to Section 299 of IPC which defines culpable homicide is clear. It reads thus :

“Explanation 2 to Section 299 IPC – Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.”

23 With this, let us examine whether the offence falls under Section 302 of the IPC. We have already noted injuries found on dead body of Vijay Phadvale. We have noted size of injury on neck of deceased Vijay Phadvale and and we reiterate that it was of size 9 cm x 5 cm x 7 cm deep extending midline of the neck. The force with which this injury is caused is reflected from the fact that it caused fracture upto spinal cord at thoracic 1 vertebra level. Evidence of prosecution, as noted in foregoing paragraphs, establishes bodily injuries as well as nature of injuries caused by appellant / accused to the deceased. Intention in causing such injuries is writ large from seat of wounds found on the dead body of Vijay Phadvale. As seen from the evidence of

PW4 Dr.Vasant More, injuries on the dead body of Vijay Phadvale were sufficient in the ordinary course of nature to cause his death. The injuries are not shown to be accidental or unintentional nor it is pointed out that appellant / accused had intended to cause some other kind of injuries. In the wake of this, the irresistible conclusion which needs to be put on record is that the appellant / accused assaulted deceased Vijay Phadvale intentionally and knowingly for causing his death. Hence, conviction of appellant / accused for the offence punishable under Section 302 of the IPC and resultant sentence is also proper.

24 In the result, there is no merit in the appeal. Hence the order :

ORDER

The Appeal is dismissed.

(A.M.BADAR, J.) (V.K. TAHILRAMANI, J.)