

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 830 OF 2015**

Sandip @ Gotya Vishwanath Shinde	]
Aged about 30 years,	]
Convict Prisoner No. C/4213	]
(At present in Judicial custody at	]
Kolhapur Central Prison)	]
Resident of : Ramgad Goshala Road	]
Opp. Kamashi Building,	]
Jai Ambe Mata Chawl, Room No. 7	]
Mulund (W), Mumbai-400 080	].. Appellant
	[Ori.Accused No.2]

Vs.

The State of Maharashtra	]
Through Senior Inspector of Police,	]
City Police Station, Mulund, Mumbai	]
(Vide CR No. 227 of 2005)	].. Respondent

....

Mrs. Nasreen S.K. Ayubi Advocate appointed for the Appellant
Mr. Arfan Sait A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI, JJ.
DATED : SEPTEMBER 14, 2017**

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant - original
accused no.2 against the judgment and order dated 24.3.2015

passed by the learned Sessions Judge, Greater Bombay in Sessions Case No. 764 of 2005. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to imprisonment for life and fine of Rs.2000/- in default R.I. for six months.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Mahendra @ Baba Manware (hereinafter referred to as deceased "Baba") was arrested by the police 1½ years prior to the incident on the ground that he had committed theft of motor-cycle. Baba told PW 1 Manohar that the theft was not committed by him and it was committed by the appellant. Therefore, the appellant was arrested by the police. After the appellant was arrested, PW 4 Santosh met the appellant in the Jail. At that time, the appellant told PW 4 Santosh that he will kill Baba.

(ii) The incident took place in the night between 17.6.2005 and 18.6.2005. At about 1.00 a.m. PW 4 Santosh, PW 5 Sanjay and PW 8 Kiran saw the appellant taking away

Baba in an auto-rickshaw. At that time, Baba was in an inebriated state. PW 4 Santosh and PW 5 Sanjay told PW 6 Ramesh about the fact that the appellant and his friends took Baba in an auto-rickshaw. They also told Ramesh that life of Baba was in danger. Therefore, Ramesh told PW 5 Sanjay and PW 8 Kiran that they will search for Baba. Sanjay had a bike, therefore, he told Ramesh that he (Sanjay) and Kiran will proceed on bike to search for Baba and Ramesh will go in auto-rickshaw to search for Baba. Sanjay and Kiran went by station road whereas PW 6 Ramesh went by RHB road. At that time, it was 2.15 a.m. After crossing some distance, PW 6 Ramesh saw the appellant and his friends were assaulting Baba. The appellant was assaulting Baba with a weapon. The appellant threatened Ramesh that if he intervened, the appellant will kill him. The appellant directed his friends to catch Ramesh, therefore, Ramesh got frightened and ran away. Meanwhile, police received message on wireless that one injured person was lying on RHB road Mulund, hence, PW 5 PSI Rajeshirke went to the spot. He saw one person lying there in an injured condition with blood oozing from his body, hence, he gave message to the relatives of the deceased. Police came to the

house of PW 1 Manohar maternal uncle of Baba and informed him that body of Baba was lying on RHB road. Hence, Manohar went to the spot and he saw Baba lying with injuries on his person. Baba was taken to the hospital. Manohar also went to the hospital. In the hospital, PW 4 Santosh and PW 5 Sanjay who had come to the hospital and who reside near the house of Manohar, informed him that at about 2.00 a.m. the appellant along with 2 others had taken Baba in a rickshaw with them. Manohar knew the appellant as the appellant was residing behind his hut. Manohar then lodged F.I.R. Thereafter investigation commenced. The dead body of Baba was sent for post-mortem. During the post-mortem, it was found that Baba had sustained 14 injuries. Out of 14 injuries, 10 injuries were chop wounds, two injuries were stab injuries and two injuries were incised injuries. Injuries were mostly on the parietal region i.e. four injuries were caused on the head of the deceased. In addition, there were injuries on the scapular region, neck, chest and other parts of the body. After completion of investigation, charge sheet came to be filed against the appellant and other accused.

3 Charge came to be framed against the appellant along with other five accused under Sections 143, 144, 147, 148, 149, 302 read with Section 34 or in the alternative read with Section 149 of IPC and Section 135 of the Bombay Police Act. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge acquitted the other accused, however, convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant assaulted Baba with chopper and caused his death.

5 The conviction of the appellant is mainly based on the evidence of PW 6 Ramesh who is an eye witness to the incident and on the evidence of PW 4 Santosh, PW 5 Sanjay and PW 8 Kiran who have seen the appellant taking away the deceased Baba in an auto-rickshaw at about 2.00 a.m. The dead body of Baba was found on RHB road Mulund at about 3.00 a.m. PW 6 Ramesh has stated that at about 2 a.m. he was returning back to his house in his rickshaw, at that time, PW 4 Santosh and PW 5 Sanjay met him near Ambika Nagar Naka. They told him that the appellant and his two friends had taken away deceased Baba in an auto-rickshaw. They also told that life of Baba was in danger. Therefore, Ramesh told PW 4 Santosh and PW 8 Kiran that they should search for Baba. Sanjay had a bike. Therefore, Sanjay and PW 8 Kiran went in search of Baba by station road, whereas, PW 6 Ramesh went in his rickshaw in search of Baba by RHB road. At that time, the time was 2.15 a.m. When Ramesh had crossed a little distance, he saw the appellant and his friends assaulting Baba. The appellant was assaulting Baba with a weapon. When the appellant saw Ramesh, he threatened Ramesh that if Ramesh intervened, he will kill Ramesh. The appellant directed his friends to catch

Ramesh, therefore, Ramesh got frightened and ran away from the spot in his rickshaw.

6 In addition to the evidence of PW 6 Ramesh who is an eye witnesses, the prosecution is relying on the evidence of PW 4 Santosh, PW 5 Sanjay and PW 8 Kiran on the aspect of “last seen”. Santosh has stated that after having chinese food, they were returning at 1.00 a.m. to Ambika Nagar. There he saw PW 5 Sanjay, PW 8 Kiran and Baba. At that time, the appellant came there. The appellant made enquiries with Kiran and Sanjay about Baba. Sanjay told the appellant that Baba had consumed liquor and therefore, he was sleeping in the rickshaw. The appellant tried to wake up Baba but he gave no response. Two persons were along with the appellant. One of the two friends was sitting in the driver seat of an auto-rickshaw. He started the rickshaw then the appellant and his two friends took Baba in the said rickshaw. Santosh has stated that this took place at about 1.30 a.m. Santosh told PW 8 Kiran and PW 5 Sanjay that life of Baba was in danger. While he was stating so to PW 8 Kiran and PW 5 Sanjay, PW 6 Ramesh came there in a rickshaw. Santosh told Ramesh that there was

danger to the life of Baba. Therefore, Ramesh immediately proceeded in his rickshaw in search of Baba. Thus, the evidence of PW 4 Santosh shows that at about 1.30 a.m. the appellant took away Baba in a rickshaw and the evidence of PW 15 Rajeshirke shows that at about 3.00 a.m. he received a wireless message that one injured person was lying on RHB road Mulund. The proximity of time between the deceased being "last seen" with the appellant and the body of the deceased being found is just about 1½ hour. This fact and the other circumstances rule out the possibility of any other person assaulting Baba and causing his death.

7 Not only PW 4 Santosh has deposed on the aspect of "last seen", but in addition, PW 5 Sanjay and PW 8 Kiran have also deposed on the aspect of "last seen". Both these witnesses stated that the appellant took away the deceased with him in a rickshaw. The evidence of PW 8 Kiran shows that the appellant took away the deceased in a rickshaw a little after 1.30 a.m.

8 One more circumstance against the appellant is that

he had the motive to commit the murder of Baba. The evidence of PW 1 Manohar and PW 4 Santosh shows that the appellant had the motive to commit the murder of Baba. PW 1 Manohar has stated that about 1½ years prior to the incident Baba was arrested on the ground that he had committed theft of motor-cycle. Manohar further stated that Mahendra (Baba) told him the theft was not committed by Baba but it was committed by the appellant. Therefore, the appellant was arrested by the police. The evidence of PW 4 Santosh shows that in the year 2004 when he was in Jail, the appellant met him in the Jail. At that time, the appellant told him that he will kill Baba. The evidence of PW 1 Manohar shows that the appellant was released from Jail just two days prior to the incident. Thus, through the evidence of PW 1 Manohar and the evidence of PW 4 Santosh, the prosecution has proved the motive for the appellant to commit the crime.

9 One more circumstance against the appellant is that there is recovery of the weapon and clothes at his instance. Panch witness PW 3 Mahesh has deposed about this aspect. He has stated that in his presence, the appellant made statement

that he would produce the clothes and the chopper. Thereafter, the appellant led the police and panchas to one hut and produced chopper and the clothes. The Memorandum and panchnamas are at Exh. 45A, Exh. 46 and Exh. 47. The C.A. Report shows that the clothes and the weapon were stained with human blood. Ms. Ayubi the learned counsel for the appellant pointed out that the panch witness as well as the panchnamas do not mention about the blood stains on the clothes which were recovered at the instance of the appellant, hence, the C.A. Report Exh. 34 cannot be believed. As far as this aspect is concerned, the C.A. Report shows that the pant and the shirt of the appellant appeared to be washed, and hence, to the pancha who is a lay person, the blood stains would not have been easily visible. However, the C.A. Report shows that on the shirt and pant, human blood stains were found. In this connection, we may usefully refer to the decision of the Supreme Court in the case **Gura Singh Vs. State of Rajasthan**, reported in **(2001) 2 SCC 205**, wherein it has been observed as under :

" In view of the authoritative pronouncement

of this Court in Teja Ram Case (1999) 3 SCC 507) we do not find any substance in the submissions of the learned Counsel for the appellant that in the absence of the report regarding the 'origin of the blood, the trial Court could not have convicted the accused. The Serologist & Chemical Examiner has found that the chadar seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The trial Court as well as the High Court were, therefore, justified in holding the circumstance as proved beyond doubt against the appellant."

10 Similar view has been taken by the Supreme Court in the cases of ***R. Shaji Vs. State of Kerala*** reported in **(2013) 14**

SCC 266 and **Molai and Anr. Vs. State of Madhya Pradesh** reported in **1999 (9) SCC 581**. It is pertinent to note that the appellant has not given any explanation for the finding of human blood on his clothes which were recovered at his instance.

11 It is the prosecution case that the appellant assaulted deceased Baba with a chopper. This is borne out by the post-mortem notes Exh. 27 which show that 14 injuries were sustained by Baba. The said injuries are as under:

- “(1) Chop wound over posterior aspect of right parietal region, vertically oblique, size 10 cm x 5 cm x bone deep Cavulsion of the scalp. Reddish in colour;
- (2) Vertically oblique chop wound over posterior aspect of mid parietal region i.e. medial to the above injury, size 5 cm x 1 cm x bone deep (outer table perforated);
- (3) Vertically oblique chop wound over the mid parietal region 2 cms lateral to the above wound, size 6 cm x 1 cm x cavity deep;
- (4) Anterior posterior chop wound injury over

left side of head, cutting left ear at level of trigus, and left mastoid to left posterior aspect of parietal bone, size 12 cm x 1 cm x bone deep;

(5) Obliquely transverse chop wound over posterior aspect of neck, at the junction of the neck, thorax, size 8 cm x 2 cm x vertebra deep;

(6) Vertically oblique chop wound over scapular region, 6 cm left to midline and 4 cm below shoulder top, size 11 cm x 4 cm x scapular deep;

(7) Vertical chop wound over vertebra and left side of the scapular region just above left posterior axillary fold, size 6 cm x 2 cm x muscle deep;

(8) Oblique chop wound over the left shoulder front (top) size 3 cm x 1 cm x bone deep;

(9) Vertically oblique stab wound over mid-line of chest at the level of nipples, size 4 cm x 1½ cm x cavity deep;

(10) Vertically oblique stab wound over xypoid (more over left side) size 3 cm x 1 cm x cavity deep, spinal shape;

(11) Transversely oblique chop wound over

ventro lateral aspect of right forearm. Middle third, size 5 cm x 2 cm x bone deep;

(12) Incised wound over ventral aspect, proximal phalanx, right thumb size 3 cm x 1 cm x bone deep;

(13) Vertically oblique two chop wounds over middle third, ventro aspect of left forearm of size 3 cm x 2 cm x bone deep;

(14) Incised wound over ventral aspect, 2nd left index finger size 3 cm x 1 cm x 1 bone deep."

Looking to the injuries mentioned in the post-mortem notes, it can be seen that the injuries were possible by chopper. Thus, post-mortem notes also corroborate the prosecution case.

12 On going through the evidence on record, we are of the opinion that the prosecution has proved its case against the appellant beyond reasonable doubt, hence, we find no merit in the appeal. Appeal is dismissed.

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