

mm

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 714 OF 2014

Ankush Harischandra Waghmare ...Appellant
(Orig. Accused)

Vs.

The State of Maharashtra ...Respondent
(Orig. Complainant)

Ms. Ameeta Kuttikrishnan, Advocate appointed for the Appellant
Mrs. G.P. Mulekar, A.P.P for the State

**CORAM : SMT. V.K. TAHILRAMANI, &
M.S. KARNIK, JJ.
DATED : 4TH OCTOBER, 2017**

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

1. The Appellant has preferred this appeal against the judgment and order dated 30th November, 2013 passed by the learned Additional Sessions Judge, Khed in Sessions Case No.29 of 2011. By the said judgment and order the Appellant has been convicted under Section 302 of I.P.C for causing the death of Mohammed Hasan Chiplunkar. For the said offence he has been sentenced to

life imprisonment and fine of Rs.3000 i/d Rigorous Imprisonment for 3 months. In addition the Appellant has been convicted under Section 324 of I.P.C for causing injuries to P.W. 8 Nanda who is the mother-in-law of the Appellant. For the said offence he has been sentenced to Rigorous Imprisonment for one year and fine of Rs.500/- i/d Rigorous Imprisonment for one month.

2. The prosecution case briefly stated is as under:

The Appellant was working as a labourer with the deceased Mohammed Hasan Chiplunkar and his brother P.W. No.1 Hashmat Hasan Chiplunkar. The Appellant was residing along with his wife Jyoti (P.W. 12) and parents of Jyoti at Kalkavne Khairat which is in Ratnagiri District. Jyoti was also working as a labourer with Mohammed Hasan Chiplunkar. The incident occurred on 14th April, 2011 at about 6 p.m. The Appellant came home in an intoxicated state. He had brought one bottle of liquor with him. He poured the said liquor from the bottle in a glass and asked his wife P.W. 12 Jyoti to give him dinner. Jyoti gave him dinner. While giving

dinner liquor from the glass fell down, hence the Appellant started assaulting his daughter as well as Jyoti. At that time parents of Jyoti came to rescue her and her daughter. The Appellant then assaulted P.W. 8 Nanda who is his mother-in-law. Somebody informed the deceased Mohammed Chiplunkar who was the employer of the Appellant and Jyoti, that the Appellant was assaulting Jyoti. Deceased Mohammed Chiplunkar came to the spot and he asked the Appellant why he was assaulting his wife Jyoti. Mohammed tried to convince the Appellant, however the Appellant started to assault Mohammed with sickle. This was also witnessed by P.W. 7 Sanjay. Sanjay went to the house of P.W. 1 Hashmat who was the brother of Mohammed. Sanjay informed Hashmat that the Appellant was assaulting Mohammed. Hashmat then went towards the spot however on the way he met the Appellant. The Appellant informed Hashmat that he had killed Mohammed with a sickle. When Hashmat and others went to the spot they saw Mohammed lying on the ground with injuries on his body. Mohammed was taken to the hospital where the Doctor declared him dead. Hashmat then lodged F.I.R, thereafter

investigation commenced. The dead body of Mohammed was sent for Postmortem Report. PW. 10 Dr. Jadhav conducted postmortem on the dead body of Mohammed. He found ten injuries on the body of Mohammed. 3 of the injuries were on the parietal region, 4 injuries on occipital region, 1 injury was on the chest and the last two injuries were on the wrist and chin. The Appellant was arrested. A blood stained sickle was recovered at the instance of the Appellant. At the time of arrest, the clothes of the Appellant were found stained with blood, they came to be seized. After completion of investigation the charge-sheet came to be filed.

3. Charge came to be framed against the Appellant under Section 302 for causing the death of Mohammed Hasan Chiplunkar, under Section 324 for causing hurt to Nanda and Chagan, under Section 323 for causing hurt to Jyoti and under Section 201 of I.P.C. 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 this case the learned Sessions Judge convicted and sentenced the

Appellant as stated in paragraph 1 above hence, this Appeal.

4. We have heard the learned Counsel for the Appellant and learned A.P.P for the State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, for the below mentioned reasons we are of the opinion that the Appellant assaulted Mohammed Hasan Chiplunkar with sickle and caused his death.

5. The conviction of the Appellant is mainly based on the evidence of two eye witnesses i.e. P.W. 7 Sanjay and P.W. 12 Jyoti. Sanjay, his parents, the Appellant etc., were working under Mohammed Chiplunkar. Jyoti wife of the Appellant was also working with Mohammed Chiplunkar. On the day of the incident the Appellant assaulted his wife Jyoti. Some one informed Mohammed Chiplunkar that the Appellant had assaulted his wife. Mohammed Chiplunkar then came to the spot, he asked the Appellant why he was doing so. Thereupon the Appellant removed

sickle and started to assault Mohammed Chiplunkar. Mohammed fell on the ground. Sanjay then went to the house of Mohammad there he met Hashmat (P.W. No.1) brother of Mohammad. He informed Hashmat about Appellant assaulting Mohammed then Hashmat came to the spot and lifted Mohammad and took him in a vehicle to the hospital.

6. The second eye witness is P.W. 12 Jyoti, she was the wife of the Appellant. She has stated that she was residing at Kalkavane Khairat, District Ratnagiri with her husband i.e. the Appellant, her mother, her father and others. On the day of the incident her husband came home in an intoxicated state. He had brought one bottle of liquor, he poured the liquor from the bottle in a glass and asked her to give him dinner. She gave him dinner at that time the liquor from the glass fell. He removed one half burnt stick from the earthen oven and started to assault his daughter as liquor had fallen due to her. At that time Jyoti's parents came to rescue her and her daughter. Her husband then assaulted her mother. Her mother fell down. Meanwhile some one informed her employer

Mohammed Chiplunkar about the incident. Hence her employer came to the spot. The employer Mohammed asked the Appellant why he was assaulting his wife Jyoti. Then her husband that is the Appellant started to assault Mohammed with a sickle.

7. Learned Counsel for the Appellant submitted that there are major discrepancies in the evidence of P.W. 7 Sanjay and P.W. 12 Jyoti, both of whom are eye witnesses to the incident. No doubt there are some discrepancies in the evidence of both these eye witnesses however it is seen that both these witnesses are illiterate labourers. However the basic substratum of the evidence of both these witnesses is that the Appellant assaulted Mohammed with a sickle which is absolutely consistent and is not dislodged. There is no discrepancy at all as far as this aspect is concerned.

8. It is the prosecution case that the Appellant assaulted Mohammed with a sickle which led to the death of Mohammed. This is borne out by the medical evidence. P.W. 10 Dr. Jadhav conducted the postmortem on the dead body of Mohammed. He

found ten injuries on the body of Mohammed. 3 of the injuries were on the parietal region, 4 injuries were on occipital region, 1 injury was on the chest and the last two injuries were on the wrist and chin. Dr. Jadhav has categorically stated that the injuries mentioned in Postmortem report may be caused with sickle Article-9.

9. In addition to the evidence of the two eye witnesses the prosecution is relying on the circumstance, of extra judicial confession. In relation to this circumstance reliance is placed on the evidence of P.W. No.1 Hashmat who is the brother of deceased Mohammed. Hashmat has stated that the Appellant was working with them. Hashmat has further stated that at about 7.00 p.m. P.W. No.7 Sanjay came to his house. Sanjay informed Hashmat that the Appellant was assaulting Mohammed. Hence Hashmat proceeded to the spot. However on the way Hashmat met the Appellant. The Appellant told Hashmat that he had killed Mohammed with the sickle. When Hashmat went to the spot he found his brother Mohammed lying on the ground with injuries on

his person. Hashmat took Mohammed to the hospital where the Doctor declared him dead. Hashmat then lodged FIR Exhibit-15.

10. The prosecution has also placed reliance on the circumstance of recovery of blood stained sickle at the instance of the Appellant. P.W. No.6 Rajan is the panch witness who has deposed on this aspect. He has stated that the Appellant stated in his presence that he had kept the sickle under dry leaves under a tree and he will produce the same. Rajan has stated that thereafter the Appellant took them to the spot and removed the sickle from under dry leaves. The sickle was stained with blood. Police seized the same.

11. Another circumstance against the Appellant is that when he was arrested the clothes on his person were found stained with blood. P.W. No.3 panch witness Samir has deposed about this aspect. He has stated that the Police arrested the Appellant in his presence and seized the clothes which were on the person of the Appellant. There were blood stains on the said clothes. The evidence of Investigating Officer P.W. No.13 shows that the clothes

were sent to the C.A. The C.A. Report Exhibit-57 shows that the sickle as well as the clothes of the Appellant were stained with 'Human' blood. In this connection, we may usefully refer to the decision of the Supreme Court in the case of **Gura Singh Vs. State of Rajasthan**¹, 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."

Similar view has been taken by the Supreme Court in the cases of R. Shaji Vs. State of Kerala², Molai & Anr. Vs State of Madhya Pradesh.³ and Khujji @ Surendra Tiwari Vs. State of Madhya Pradesh⁴. It is pertinent to note that the Appellant has not given any explanation for the presence of blood on his clothes or on the sickle.

1 (2001) 2 SCC 205

2 (2013) 14 SCC 266

3 1999(9) SCC 581

4 AIR 1991 SC 1853

12. Learned Counsel for the Appellant submitted that the circumstance that at the time of arrest the clothes of the Appellant were found stained with blood which came to be seized cannot be relied upon in view of the evidence of P.W. 13. She drew our attention to the evidence of Investigating Officer P.W. No.13 A.P.I. Shinde, which shows that since the incident till arrest of Appellant the Appellant was along with the villagers. The panchanama Exhibit-22 which is the arrest panchanama of the Appellant shows that the complainant Hashmat was present and he stated that he had caught the Appellant and he has handed over the custody of the Appellant to the police. It is seen from the time of the incident till the time of arrest the Appellant was indeed with the villagers thus this aspect is not such as to create any doubt about the circumstance that when the Appellant was arrested the clothes on his person were blood stained which came to be seized under Panchanama Exhibit-22. It is also pertinent to note that at the time of arrest, no injuries were found on the person of the Appellant, which is clear from arrest panchanma Exhibit-22. Thus it cannot

also be argued that the blood on his clothes is his blood. In any event, as seen from his statement under Section 313 Cr.PC., it is not even the case of the Appellant that his clothes were stained with his own blood.

13. The Appellant has been convicted under Section 302 as well as 324 of the I.P.C. He was convicted under Section 302 for causing the death of Mohammed Hasan Chiplunkar by assaulting him with a sickle, the Appellant was also convicted under Section 324 of I.P.C for causing injury to P.W. No.8 Nanda. However it is pertinent to note that P.W. No.8 Nanda has made no reference at all to assault on her by the Appellant by sickle or any weapon. In fact she has not attributed any act of assault on her by the Appellant. In such case the conviction of the Appellant under Section 324 for causing injury to P.W. No.8 Nanda has to be set aside. As far as the conviction under Section 302 of I.P.C is concerned the prosecution has proved the same beyond reasonable doubt. In the result the following order is passed.

O R D E R

1. The conviction and sentence of the Appellant under Section 302 is confirmed however the conviction and sentence of Appellant under Section 324 of I.P.C is set aside.

2. The Appeal is partly allowed in the above terms.

(M.S. KARNIK, J.)

(SMT. V.K. TAHILRAMANI, J.)