

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

CRIMINAL APPEAL NO. 1095 OF 2013

Pradeep @ Balu Shivram Barge	]	
Age 41 years, Occ. Agriculture	]	
Residing at Ekambe, Taluka Koregaon,	]	
District Satara	]	
Presently lodged in Kolhapur	]	
Central Prison at Kalamba, Kolhapur,	]	
Convict No. 4569	]	
	]	Appellant/ Org. Accused

V/s.

The State of Maharashtra	]	
At the instance of	]	
Koregaon Police Station	]	Respondent

- Dr.Yug Mohit Chaudhary for the Appellant.
- Mrs.G.P. Mulekar, A.P.P. for the Respondent-State.

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

RESERVED ON : 06th SEPTEMBER, 2017.
PRONOUNCED ON : 20th SEPTEMBER, 2017.

JUDGMENT (PER : DR. SHALINI PHANSALKAR-JOSHI, J.) :-

1] In this appeal an exception is taken to the judgment and order dated 3rd December 2008 of Additional Sessions Judge, Satara

in Sessions Case No.62 of 2008 whereby Appellant is convicted for the offence under Section 302 and 323 of the Indian Penal Code (IPC) and sentenced to suffer imprisonment for life and fine of Rs.5,000/- in default R.I. for 6 months on the first count and fine of Rs.1,000/- in default R.I. for 1 month on the second count.

2] Brief facts of the appeal can be stated as follows;

PW-1 Namdeo Jadhav is the younger brother of deceased Dilip. They were residing adjacent to each other. Dilip had one son by name Karan aged about 13 to 14 years. Two to Four days prior to the date of incident there was some quarrel between Karan and son of Appellant. On the date of incident i.e. 18/04/2007 at about 7.45 pm when Karan had gone to the shop of Shri Wagh, Appellant abused him. Hence PW-9 Karan came to the house crying. He informed about the same to his father and uncle. Hence both of them decided to go to the house of Appellant's brother to inform him about it. While they were proceeding on the way, Appellant came from opposite direction. Dilip asked the Appellant as to why he has abused his son Karan. Thereupon Appellant started stabbing the deceased with knife on his chest. He inflicted two blows of knife on his chest. When PW-1 Namdeo tried to obstruct him by holding his hand, he also sustained

injury to middle finger of his right hand. Appellant gave the jerk and ran away. Injured Dilip was then taken to the Civil Hospital, where he was declared dead.

3] On the same night at about 9.30 pm, PW-1 Namdeo lodged complaint at Koregaon Police Station. On his complaint CR No.35 of 2007 came to be registered against the Appellant for the offence under Section 302 and 323 of IPC. During the course of investigation, the spot panchanama was made vide Exh.26 in the presence of PW-3 panch Sambhaji Kashinath Phadatare. After the inquest panchanama, the dead body of Dilip was referred for postmortem. As per the postmortem report, the cause of his death was left side haemothorum with ruptured spleen. Appellant was arrested on the next day and at his instance the blood stained knife came to be seized under the memorandum and recovery panchanama Exh.35 in the presence of the panch PW-5 Anandrao Rangrao Barge. The clothes of the Appellant and deceased Dilip, seized under panchanama Exh.27 and Exh.28, were sent to CA. The injury certificate of PW-1 Namdeo was collected from PW-7 Dr.Vaibhav Vasantrao Jadhav and after completion of due investigation, charge-sheet came to be filed against the Appellant in the Court of Judicial Magistrate First Class,

Koregaon.

4] On committal of the case to the Sessions Court at Satara, the charge was framed against the Appellant vide Exh.6. Appellant pleaded not guilty and claimed trial raising the defence of denial and false implication.

5] In support of its case, prosecution examined in all 10 witnesses and on appreciation of their evidence, the trial Court was pleased to convict and sentence the Appellant as stated above.

6] This judgment of the trial Court is challenged in the present appeal by learned counsel for the Appellant Shri Yug Mohit Chaudhary; whereas supported by learned A.P.P. Mrs.G.P.Mulekar.

7] In his submissions, learned counsel for the Appellant fairly concedes that he is not disputing the occurrence of the incident and assault on the deceased at the hands of the Appellant, as deposed by the prosecution witnesses. However, his only submission is that the present case cannot fall under Section 302 of IPC, as it stands squarely covered under Section 304 Part I of IPC. According to him, the incident has occurred in a sudden quarrel without any

premeditation. It is submitted by him that, it was not at all a deliberate act on the part of the Appellant and the injuries found on the body of Dilip also do not spell out that the Appellant has acted in any inhuman or cruel manner.

8] Per contra, according to learned A.P.P., having regard to the nature of the injuries which were inflicted on vital parts of the body and that too by sharp weapon like knife and which has resulted into immediate death of Dilip, it cannot be said that the case can fall under Section 304 Part I of IPC.

9] In the light of these rival submissions advanced by learned counsel for the Appellant and learned A.P.P., if the evidence on record is scrutinized, then we are more than satisfied that the prosecution has succeeded in proving that the Appellant has stabbed deceased with knife, which has resulted into his death.

10] The prosecution has in this case though examined as many as 10 witnesses, the main plank of prosecution case is on the evidence of two eye-witnesses; namely PW-1 Namdeo and PW-9 Karan. The evidence of both eye-witnesses go to prove that on account of the

quarrel that has taken place between children of the Appellant and the deceased two to three days prior to the incident, on the date of incident at about 7.45 pm when PW-9 Karan had gone to the shop of Shri Wagh, the Appellant had abused him and hence Karan had returned to the house crying. On inquiries with him, Karan informed about the same to his father and uncle. Therefore, along with Karan, they decided to go to the house of the brother of the Appellant to make him aware of the happening. On the way, they met the Appellant who was coming from opposite direction. When deceased asked the Appellant as to why he has abused his son, as per their evidence, Appellant started inflicting the blows of knife on deceased. Two blows were directly inflicted on the chest of the deceased. While the Appellant was inflicting third blow with knife, PW-1 Namdeo obstructed him by holding his hand. Thereupon the Appellant gave the jerk and ran away. Because of the injuries, deceased fell down. He was taken to the Civil Hospital by PW-1 Namdeo; where doctor declared him dead. Immediately on the same night, the complaint was lodged by PW-1 Namdeo at Koregaon Police Station and the offence is registered at 9.30 pm. The complaint contains all the details of the incident.

11] This ocular evidence of PW-1 Namdeo and PW-9 Karan gets full support and corroboration from the evidence of PW-4 Dr.Mahadhan, who was on duty as Medical Officer at Civil Hospital, Satara and has conducted postmortem on the dead body of Dilip on the very night at 11.30 pm. He found following external and internal injuries:-

- “1. Stab wound of size 4 cms in length over Anterior Axillary fold of left side. Direction : obliquely towards mid-line (lung), Depth : 10 cm, Margins : Inverted, Edges : Sharp.*
- 2. Stab wound of 3 cms in length piercing upto the abdominal cavity. Size : 1 cm medial to mid axillary line between 10th and 11th inter-costal space left side. Direction: obliquely towards midline (spleen), Margins: inverted, Edge: Sharp.*
- 3. Stab wound over post lateral aspect of left arm lower 1/3rd horizontal. 2 cm in length, Margin: inverted, Edges:sharp, Depth:1 cm piercing skin and subcutaneous tissues.”*

12] According to Dr.Mahadhan, the cause of death was left side haemothorax with ruptured spleen. The postmortem report is produced and proved on record at Exh.30, with Advanced Cause of

Death Certificate at Exh.31.

13] Further, in this case, there is evidence of PW-7 Dr.Vaibhav Vasantrao Jadhav, who was working as Medical Officer at Koregaon R.H., Koregaon. He has examined PW-1 Namdeo Jadhav on the same night immediately after the incident and found following injuries on his person;

“Incised wound of size about 1 cm x 3 mm x 3 mm skin deep present over middle of medial aspect of Rt. middle finger.

Horizontally placed.

Edges:clean-cut, bleeding.

Time since injury : within 6 hrs.

Type of object : Hard and sharp.

Nature of injury : Simple injuries.”

14] The injury certificate of PW-1 Namdeo is produced at Exh.41.

15] If at all any corroboration is required to this ocular and medical evidence, which go hand in hand, then there is a evidence of PW-5 panch Anandrao Rangrao Barge, who has deposed about the recovery of blood stained knife, under panchanama Exh.35 at the instance of the Appellant. The Chemical Analyzer Report is produced

on record at Exh.54, proving the presence of human blood stains on the knife and clothes of the Appellant.

16] In the face of this conclusive evidence on record proving the occurrence of the incident in the manner in which the prosecution witnesses have deposed, learned counsel for the Appellant has also conceded that he cannot dispute the said occurrence and the assault with knife on the deceased at the hands of the Appellant. His only contention therefore is that the incident has taken place all of sudden, without any premeditation. Hence the possibility of such incident taking place in a sudden quarrel cannot be ruled out.

17] To substantiate this submission, learned counsel for Appellant has pointed out to the cross-examination of PW-1 Namdeo and PW-9 Karan to prove that the Appellant was not knowing that these witnesses and the deceased were coming to his house, hence there was no reason for the Appellant to be armed himself with knife to assault the deceased. It is further submitted that the Appellant has not come to the house of the deceased but these two witnesses and deceased were proceeding to the house of the Appellant, or according to them, to the house of his brother. Therefore, they can be called as

aggressors but not the Appellant. Thirdly, it is submitted that if one sees the weapon used by the Appellant in the assault which is a knife, having length of only 4 inches, then it cannot be said that the Appellant was having any intention or premeditation to inflict fatal assault on the deceased. Further, it is submitted that, even PW-4 Dr.Mahadhan, who has conducted the postmortem, has not deposed that injuries found on the body of the deceased were sufficient in the ordinary course of nature to cause his death. Conversely, his cross examination shows that if the patient was brought immediately to the hospital with similar injuries, the life of such patient might have been saved.

18] As to the injuries found on the middle finger of PW-1 Namdeo, it is submitted by learned counsel for Appellant that it was a very trifle and minor injury and it could have been possible in case the corner of the iron sheet of stretcher touches the body of a person. An attempt is made to point out to the cross examination of PW-7 Dr.Vaibhav Jadhav, who has examined PW-1 Namdeo, to show that according to him, when there is an attempt of resisting the assault by knife, there is possibility of associated injuries on other fingers. Thus, the sum and substance of the learned counsel for the Appellant is that,

this case cannot fall under Section 302 of IPC but can fairly stand covered only under Section 304 Part I of IPC.

19] We are however unable to accept these submissions for the simple reason that there is not an iota of evidence on record to show that there was any sort of aggression or sudden quarrel between the deceased and the Appellant. Conversely, suggestion to that effect was when put up to PW-1 Namdeo, he has flatly denied the same in his cross-examination. It is brought on record through his cross-examination that there was no scuffling or abuses prior to the stabbing, either between deceased or the Appellant or between PW-1 Namdeo and the Appellant.

20] Moreover, if one sees the nature of injuries sustained by the deceased, then it is apparent that these injuries were inflicted on vital parts of body like the chest and abdominal cavity. These two injuries were found fatal as the deceased succumbed to them immediately. He was declared dead when brought to the hospital. Moreover, Appellant has not stopped after inflicting these two blows only but there was also third blow of the knife inflicted by Appellant on the deceased which has resulted into stab wound over post lateral

aspect of his left arm. The Appellant was also inflicting some more blows. However, only because of the physical intervention of PW-1 Namdeo in obstructing the Appellant by holding the knife, when he was about to assault the deceased again, Appellant could not succeed in doing so and he ran away from the spot. Therefore, it is not a case of single blow which has resulted into the death.

21] We are also not impressed with the submission that as PW-4 Dr.Mahadhan has not stated that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause the death, the case could fall under Section 304 Part I of IPC. In our opinion, the nature of injuries which were stab wounds on the vital parts of body is sufficient in itself to infer that these injuries were sufficient in the ordinary course of nature to cause the death.

22] In our opinion, Explanation 2 to Section 299 of IPC sufficiently answers the submission advanced by learned counsel for the Appellant that if deceased was brought to the hospital immediately, his life could have been saved. The said Explanation reads as follows:-

“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] In our opinion therefore reliance placed by learned counsel for the Appellant on the judgment of the Apex Court in case of *State of Rajasthan vs. Shera Ram Alias Vishnu Dutta*, reported in (2012) 1 SCC 602 is not helpful as in the said judgment, the Apex Court was pleased to hold that,

“The question whether particular injury was sufficient in the ordinary course of nature to cause death or not is a question of fact which will have to be determined in the light of the facts, circumstances and evidence produced in a given case. There could be cases where injuries caused upon the body of the deceased per se can irresistibly lead to the conclusion that the injuries were sufficient to cause death in the ordinary course of nature, while there may be other cases where it is required to be proved by documentary and oral evidence. Resultantly, it will always depend on the facts of each case. In such case, it may neither be permissible nor possible to state any absolute principle of law universally applicable to all such cases.”

24] Here in the case, the nature of injuries, the body part on which they were inflicted and the weapon used, is more than enough

to infer that these injuries were sufficient in the ordinary course of nature to cause death.

25] Learned counsel for the Appellant has then placed reliance on the judgment of the Apex Court in the case of *Sukhbir Singh vs. State of Haryana*, AIR 2002 SC 1164 and *Shridhar Bhuyan vs. State of Orissa*, 2004 Cri.L.J. 3875, wherein the necessary ingredients for bringing the case under Exception 4 to Section 300 of IPC were discussed and it was held that,

“For bringing in operation Exception 4 to Section 300 of IPC, it has to be established that the act was committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.”

26] Here in the case, none of these four ingredients are satisfied. There is no evidence of any fight or quarrel or even of exchange of abuses. There is also no evidence of the act being committed in a heat of passion. It also cannot be accepted that Appellant has not taken undue advantage or has not acted in a cruel or unusual manner. In the present case, therefore, we are unable to

accept the submission of the learned counsel for the Appellant that this case is covered by Exception 4 to Section 300 of IPC.

27] In our considered opinion, the learned trial Court has appreciated the entire evidence and material on record in its proper perspective. Hence, the conviction of the Appellant recorded by the trial Court under Section 302 and 323 of IPC does not call for any interference. The Appeal is without merits, therefore stands dismissed.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (SMT. V.K. TAHILRAMANI, J.)