

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

CRIMINAL APPEAL NO.1208 OF 2008

Kisan Baburao Vetel
Aged about 34 years
Residing at Wadar Lane
Village Malthan, Taluka Shirur,
District – Pune
presently in custody in the
Yerwada Central Prison,
Yerwada.

... Appellant/
Orig. Accused

versus

The State of Maharashtra
(At the instance of
Shirur Police Station)

... Respondent

.....

- Mr.Yashpal Thakur Appointed Advocate as per Courts order dated 07/09/2017.
- Mr.H.J. Dedhia, APP for the State/Respondent.

**CORAM : A.A. SAYED &
SARANG V. KOTWAL, JJ.
RESERVED ON : 13th SEPTEMBER, 2017
PRONOUNCED ON : 26th SEPTEMBER, 2017**

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1. By the present Appeal the Appellant has challenged the

Judgment and Order dated 01/06/2007 passed by the Ad-Hoc, Additional Sessions Judge, 14, Pune, in Sessions Case No.152/06. By the said impugned judgment and order, the Appellant was convicted for the offence punishable u/s 302 of the Indian Penal Code and was sentenced to suffer imprisonment for life and to pay a compensation of Rs.10,000/- to the wife and legal heirs of the deceased Khandu @ Navnath Tukaram Vetel and in default of payment of compensation to suffer simple imprisonment for one year. The Appellant was also convicted for the offence punishable u/s 307 of the Indian Penal Code and was sentenced to suffer simple imprisonment for a term of five years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo further simple imprisonment for six months. Both these sentences were directed to run concurrently and the Appellant was given benefit of set off u /s 428 of Cr.P.C. for the period for which he was in custody till conclusion of the trial.

2. The prosecution case pertains to the murder of one

Khandu @ Navnath Tukaram Vetel. According to the prosecution case, on 11/09/2005, between 08.00 to 08.30 p.m., in the premises of Hari Om Laundry, at Village Maldha, Tal-Shirur, Dist-Pune, the Appellant caused murder of Khandu @ Navnath Tukaram Vetel by stabbing him with knife. In the same transaction he assaulted one Ramesh Pandurang Vetel causing bleeding injury on the neck and thus the Appellant was charged and convicted for both the offences u/s 302 and 307 of IPC.

3. The prosecution case is that, in the morning on 11/09/2005 at about 10.00 a.m., the Appellant had assaulted one Vilas Vetel who was brother of the deceased Khandu. Therefore Khandu wanted to question the Appellant about the said assault. Khandu went to the laundry where the Appellant was present. At that time deceased Khandu was assaulted with knife by the Appellant. The prosecution evidence of P.W.3 Dr.Rajendra Digambar Shinde shows that Khandu had suffered 12 incised wounds out of which, five injuries were on the chest causing 3 cuts on the right lung. The cause of death was 'Cardio

respiratory arrest due to haemorrhagic shock due to multiple stab injuries.' The prosecution case is that, while P.W.6 Ramesh Pandurang Vetral tried to look inside the laundry as to what was happening, even he was assaulted by the Appellant with the same knife causing incise wound of the dimension of 3 x 2 x 1 cm over the neck. Thereafter the Appellant ran away from the spot. Ramesh Vetral was removed to the hospital. People gathered at the spot. P.W.2 Vilas Tukaram Vetral, who was brother of the deceased, was informed. He came to the spot. He informed the police and his statement was treated as the FIR. As per the prosecution case, the Appellant himself approached the police on the next day with the blood stained knife and clothes and was immediately arrested. The other injured Ramesh was in the hospital for 3 to 4 days taking treatment. Even his statement was recorded. The investigation was carried out and the charge-sheet was filed. The case was committed to the Court of Sessions. The Appellant pleaded not guilty to the charges framed against him. His defence which he had put through written statement u/s 313 of Cr.P.C. is that, on that day he was working

as an Electrician and had suffered injury on his index finger. According to him he heard hue and cry near a Pandal where he saw some unknown person running away from the spot with a knife in his hand. It is his case that, he chased that unknown person for 1 ½ kms but that unknown person still ran away. However, the knife which he was carrying fell down. The Appellant picked up the knife and went to Shirur Police Station. But police did not help him and on the contrary, on the next day he was arrested in the crime.

4. During the trial, the prosecution examined 11 witnesses. P.W.1 Nilesh Dattatraya Mahamuni, was passing by, on the road near the laundry. He had heard shouts from the laundry and he had seen the Appellant inflicting blow on the neck of Ramesh by means of knife. P.W.2 Vilas Vetel, as mentioned earlier, had lodged FIR and he deposed about the incident of altercation which had taken place in the morning between him and the Appellant. P.W.3 Dr.Rajendra Digambar Shinde had conducted the post-mortem examination and had

observed the injuries as mentioned earlier. P.W.4 Dr.Sohel Kazi had treated the injured Ramesh Vetel and has deposed about the injury caused to Ramesh Vetel on his neck. P.W.5 Babamiya Gulab Shaikh was the Panch for inquest panchanama. P.W.6 Ramesh Pandurang Vetel is the injured eyewitness who had seen the incident of assault on the deceased. He himself was attacked by the Appellant. P.W.7 Bhanudas Raj Bhurav was the Pancha for the spot panchanama, who has proved the spot panchanama Ex.22. P.W.8 Satish Dattatraya Bodre was the Pancha in whose presence the clothes of the accused and knife were seized. P.W.9 Dr.Meena Balwant Savale was the Doctor who has deposed about the injury suffered by the Appellant. It was a single lacerated wound, on his index finger measuring about 1.5 cm x 1.5 cm. P.W.10 Gulab Kushaba Temgire, was the Pancha in whose presence the clothes of the deceased were seized by the Police. P.W.11 PSI Shankar Hanuman Kengar had conducted the investigation. P.W.12 Sakharam Abaji Dalvi, was the Assistant Sub-Inspector, in whose presence the clothes of the deceased were seized. Apart from this, the prosecution has relied on the

C.A. Report. The C.A. Report shows that the clothes of the deceased and of the accused as well as the knife carried by the Appellant was having human blood of 'B' Group.

5. We have heard learned Counsel Mr. Yashpal Thakur for the Appellant and Mr. H.J. Dedhia, APP for the State.

6. As can be seen, the prosecution case is put forth mainly through the evidence of the injured eyewitness P.W.6 Ramesh Vetel. According to him, the deceased Khandu was his cousin. In the evening of 11/09/2005 Khandu told him about the quarrel between the Appellant and Vilas Vetel and he had suggested that, they should go to the Appellant to question him about the quarrel. Both of them went towards Appellant's laundry. At that time Khandu entered the laundry and the P.W.6 remained outside. This witness has further deposed that, when he opened the door; he saw Khandu was lying on the floor, and the Appellant was sitting on his person and giving knife blows on his stomach and chest. The Appellant gave knife blow on this

witness's throat. At that time, the passers by had reached there. Therefore the Appellant ran away from the spot. Khandu was removed to the hospital. This witness Ramesh Vetel was referred to Sasoon Hospital. He was admitted to Sasson Hospital and his statement was recorded after three days wherein he informed about the incident to the police.

7. The learned Counsel Mr.Thakur submitted that his cross examination shows that there was an important omission from the Appellant's statement before the Police in respect of the main facts, which he had deposed before the Court. This witness has deposed that he had stated before the police that when he opened the door, he saw that Khandu was lying on the floor and the Appellant was sitting on his person and was inflicting the blows of knife on Khandu. This witness has further deposed that he could not assign any reason as to why this fact was not recorded by the police in his statement. According to Mr.Thakur this was an important omission, which shows that the witness had not seen the incident as claimed by him. Unfortunately

during trial the defence on behalf of the accused/Appellant, no question was put to the Investing Officer P.W.11 PSI Shankar Kengar to prove this omission. We are unable to accept Mr.Thakur's submissions that this witness had not seen the incident. In any case, even if it is assumed that this witness has not stated before the Police that he had seen the Appellant sitting on the person of the deceased and stabbing him, the fact remains that his evidence is consistent with the fact that, he and the deceased Khandu had gone to the laundry and Khandu had entered the laundry and when this witness opened the door, he saw the deceased Khandu lying injured on the floor and the Appellant had attempted to cause serious injury on the person of this witness. Therefore leaving aside the omission, even otherwise we are convinced that this witness is a truthful witness and had seen the accused and the deceased together, with the accused carrying a knife and the deceased lying in injured condition on the floor and even this witness was attacked by the accused. The fact remains that the Appellant had assaulted the deceased with knife and he also assaulted this

witness Ramesh Vetel. We do not find any infirmity in the evidence of this witness to term this witness as an unreliable witness.

8. Even P.W.1 Nilesh Mahamuni, has corroborated the evidence of P.W.6 Ramesh Vetel to the extent that this witness had seen the Appellant assaulting P.W.6 on his neck. This witness P.W.1 Nilesh was passing by the road and on hearing shouts from the laundry he went near the laundry and he witnessed the incident of the Appellant inflicting knife blow on the neck of Ramesh Vetel. Thus, the incident is corroborated on material aspect by this witness, who was an independent eyewitness. Thereafter this witness had seen the deceased Khandu lying on floor inside the laundry.

9. As per the prosecution case, the Appellant himself went to the police station with the murder weapon. At that time his clothes and the knife were seized. Though the Appellant has tried to explain in what circumstances he went to the police station, it does not appear to be truthful and trustworthy.

10. In this behalf P.W.11 PSI Shankar Kengar and P.W.8 Satish Bodre were examined to prove this fact of his arrest. We do not find any infirmity in the evidence to raise any doubt about such seizure. As mentioned earlier, the clothes of the accused as well as the knife do show presence of human blood of 'B' group. This is another circumstance against the Appellant.
11. The prosecution has brought on record the injury suffered by the Appellant around the same time when the incident had occurred. The Appellant has tried to explain this injury by taking a defence that he had suffered this injury when he was working as an Electrician. However, this explanation does not appear to be truthful and it can be safely held that the injury was caused during the incident itself.
12. Mr.Thakur further submitted that looking at the nature of the injury suffered by P.W.6 Ramesh Vetel, it cannot be said that the Appellant had committed the offence punishable u/s

307 of IPC as there was no intention of commission of murder. We are of the view that since a knife injury was caused on the neck, there is no reason to infer that the Appellant did not intend to commit murder of the P.W.6. Only because people had gathered at the spot, and he wanted to escape, further damage was not caused, but intention to commit murder was clear. Therefore the conviction u/s 307 for the assault on P.W.6, recorded by the trial Judge was proper. Mr.Thakur further submitted that there was no premeditation on the part of the Appellant and the incident had occurred on the spur of the moment and this case falls within the fourth exception as mentioned u/s 300 of IPC. While it is true, that, there doesn't appear to be premeditation because the deceased himself had gone to the laundry of the Appellant; however, it cannot be said that the Appellant had not taken undue advantage and had not acted in a cruel manner. The Appellant had inflicted 12 incised wounds with knife on the person of the deceased, out of which, five injuries were grievous by themselves. P.W.3 Dr. Rajendra Shinde has opined that those five injuries i.e. the injury Nos.2, 6, 7, 8 and 9 as mentioned in

the Post-Mortem report, were grievous and were sufficient in the ordinary course of nature to cause death. Thus, these repeated blows causing grievous injuries show that the Appellant had acted in a cruel manner and stabbing the deceased who was in a helpless condition and therefore the Appellant had taken undue advantage. The learned Counsel Mr.Thakur has relied on the case of *Arjun and Ors. Vs. State of Chhattisgarh, reported in AIR 2017 SC 1150*. In this case the Hon'ble Supreme Court has observed that the injuries as inflicted in the post-mortem report suggest that the Appellants therein had not taken undue advantage or had acted in a cruel manner and therefore that case falls within the explanation of section 300 of IPC.

13. In the present case before us we are of the view that the Appellant had taken undue advantage and had acted in a cruel manner. Further more, his intention to commit murder is further indicated by his murderous attack on P.W.6, when the Appellant had inflicted knife blow on his neck. Therefore we are of the view the present case falls within the definition of murder

u/s 300 of the IPC and it is not a case falling within 4th exception u/s 300 of IPC.

14. With the result, as there is no merit in the Appeal, following order is passed :

ORDER

1. The Appeal stands dismissed.
2. Mr.Yashpal Thakur is appointed as an Advocate in this case. We direct High Court Legal Aid Services Authority to pay him Rs.10,000/- for his efforts in assisting the Court during hearing of this Appeal.

(SARANG V. KOTWAL, J.)

(A. A. SAYED, J.)