

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

CRIMINAL APPEAL NO.125 OF 2010

Dattatraya Jyotiba Raut
R/O. Bahurupi Nagar,
Vijapur Road,
Solapur.
Presently in Yerwada Jail, Pune

... Appellant/
Orig. Accused

versus

The State of Maharashtra
(At the instance of
Vijapur Naka Police Station,
Tal & Dist-Solapur)

... Respondent

.....

- Mr.P.R. Arjunwadkar, Advocate for the Appellant.
- Mr.H.J. Dedhia, APP for the State/Respondent.

**CORAM : A.A. SAYED &
SARANG V. KOTWAL, JJ.
RESERVED ON : 21st SEPTEMBER, 2017
PRONOUNCED ON : 10th OCTOBER, 2017**

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

1. The present Appeal is preferred by the Appellant against the Judgment and Order dated 31/01/2009 passed by the Ad-Hoc Additional Sessions Judge, Solapur, in Sessions Case No.264/07, whereby the Appellant was convicted for the offence

punishable u/s 302 of IPC and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment for three months. He was given benefit of set off u/s 428 of Cr.P.C. for the period, for which he was in jail i.e. 07/07/2007 till decision of the case on 31/01/2009.

2. We have heard learned counsel Mr.P.R. Arjunwadkar, Advocate for the Appellant and Mr..H.J. Dedhia, APP for the State.
3. The prosecution case is in respect of the murder of one Shardabai Dattatray Raut, who was the wife of the present Appellant. According to the prosecution case, the Appellant committed her murder on 25/06/2007 at 01.30 p.m in their residential house at Vijapur Road, Solapur with the weapons like stick, grinding stone, sickle and knife. According the prosecution case, the Appellant was unhappy with the deceased because though he did not eat meat, she used to cook meat in their house and that was the bone of contention between the couple, which gave rise

to frequent quarrels. As per the prosecution case, one such quarrel on the fateful day led to the present crime. The FIR in the present case was lodged by one Bharat Ananda Mane, who was the brother of the deceased. He has given history of quarrels between the couple. According to him, on that day, Appellant's son Kundalik informed him about the incident. Thereafter he went to the spot and found that his sister was lying in a pool of blood and thereafter he informed the police and lodged his FIR. The investigation was carried out. The spot panchanama was conducted. The Appellant was arrested on the next morning. Statements of the witnesses were recorded. After the investigation was over, the charge-sheet was filed in the Court of Chief Judicial Magistrate, Solapur, who committed the case to the Court of Sessions.

4. During the trial, the prosecution examined seven witnesses. P.W.7 Dr.Vijay Krishna Satale, had conducted post-mortem on the dead body and had noted about 20 injuries. Some of the injuries were CLWs. There were many chop wounds

and contusions. The injuries were mostly on the upper part of the body i.e. on the chest, shoulder, head and on hands and also on the forearms. The Medical Officer noted fracture of skull at three places and the cause of death was noted as, death due to head injury with injury to neck. The Medical Officer noted that the injuries were possible by knife, wooden stick and grinding stone.

5. Besides the Medical Officer, the prosecution examined the police officers who had conducted the investigation. P.W.3 Gangu Muthanna Gavandi, was a Pancha for the inquest panchanama. But she did not support the prosecution case. P.W.4 Shivdas Bhimsha Rankhambe was a Pancha for the spot panchanama, in whose presence various articles were recovered from the spot, which included pieces of bangles, a wooden stick, a sickle, a knife, a grinding stone, white shirt with full sleeves and a dark green pant. The articles were soaked in blood. The C.A. Report showed blood of 'A' group on most of these articles. Since those were found at the spot, where the deceased was

lying in a pool of blood, this circumstance does not help either the prosecution or the defence. P.W.5 PI Dinkar Digambar Chandanshive, P.W.6 P.H.C. Ravindra Madhukar Kulkarni have deposed about the investigation that was carried out.

6. The main witnesses in this case for the prosecution are P.W.1 Bharat Anand Mane, who had lodged the FIR and P.W.2 Kundalik Dattatray Raut, who was the younger son of the Appellant and the deceased.

7. P.W.1 Bharat Mane has deposed that the Appellant had married this witness's sister and the couple alongwith their two sons, was residing at Solapur. Their daughter Saraswati got married to one Samadhan who was the brother of this witness P.W.1. According to him, the Appellant was not happy with the marriage and on that count, the Appellant used to beat the deceased Sharda. This witness has also deposed that the Appellant was unhappy because the deceased used to cook meat against his wishes. For this reason also the Appellant used to

beat the deceased. He further deposed that on 25/06/2007, at about 01.30 p.m. Kundalik Raut came to his handcart when this witness was selling Bananas on his handcart. Kundalik called him to their house because there was quarrel between the Appellant and the deceased and Kundalik had seen blood stains on the Appellant's nose. Thereafter P.W.1 went to the house of the Appellant and saw that the deceased was lying in a pool of blood with the aforementioned articles lying nearby. He has further deposed that he thereafter made enquiries with a neighbour named Jagu Mavshi, who informed him that there was quarrel between the couple. Thereafter this witness went to the police station and informed about the incident. The police took down his statement and it was treated as FIR. The offence was registered vide C.R.No.146/07, at Vijapur Road Police Station u/s 302 of IPC against the Appellant. This witness is not an eyewitness to the incident. He has deposed about the possible motive for commission of the murder. According to him, the main reason for the quarrel was that the deceased used to cook meat against the wishes of the Appellant. However, his

deposition shows that the Appellant had accepted the arrangement that the deceased could cook his vegetarian food first and after his dinner, she could cook non-veg food. Learned Counsel Mr.Arjunwadkar submitted that since this arrangement was already in place, there was no reason on that day for the quarrel on this ground and any way this motive was not so strong so as to drive the Appellant to commit murder of his wife.

8. P.W.1 Bharat Mane has further deposed that at 01.30 p.m. P.W.2 Kundalik Raut informed him about the quarrel. But significantly this witness does not say that P.W.2 Kundalik told him that he had seen the dead body of the deceased in the house. This is important in the context of the deposition of the P.W.2. The evidence shows that the FIR was lodged at about 05.00 p.m. and in his cross-examination P.W.1 has stated that he had been to the police station at 01.30 p.m. and again at 02.00 p.m. He further added that he had gone to the police station only once. There is no mention of the visit to the police station at 05.00 p.m. when the FIR was registered.

9. P.W.1 has deposed that he was present in the police station for about 2 ½ hours. Besides this fact, the evidence of this witness does not mention any other significant fact.
10. P.W.1 Bharat has deposed that there were 5-6 shops adjacent to the shop of the Accused/Appellant. He has also admitted that the Appellant had taken one room on rental basis for this witness. This shows that not only the relations between the couple were cordial, but the Appellant was also helping the brother of the deceased i.e. P.W.1 Bharat Mane.
11. The prosecution thereafter has relied on the evidence of P.W.2 Kundalik, who was the younger son of the Appellant and the deceased. This witness, P.W.2, is the most important witness in the trial. Though he had not seen the actual assault, according to the prosecution case, he was the first person to reach the spot of incident and he had seen the Appellant at the spot. This witness is a child witness. When he deposed before the Court, his age was 12 years and at the time of incident he was

about 11 years of age. In a given case, if it is found that the evidence of a child witness is fully reliable, conviction can safely be based on his evidence. But the rule of prudence requires that the evidence of such witness should be corroborated on material particulars of the facts of the case. Therefore, we have scrutinized his evidence very carefully. According to P.W.2 Kundalik Raut, he and his elder brother Shivaji were residing with their parents at Solapur. Both these brothers were studying in Jagruti Vidya Mandir School. P.W.2 Kundalik was studying in the 6th standard and his brother Shivaji was studying in the 8th standard. Their school timing was from 11.30 a.m. to 05.30 p.m. Their recess was between 02.30 p.m. to 03.00 p.m. According to him, the Appellant used to go to his Barber Shop at about 08.00 a.m. and used to come back at 07.00 to 07.30 p.m. He has deposed that there used to be quarrels between his parents as the Appellant did not like his wife – deceased – cooking and eating meat in the house. The couple used to beat each other. According to P.W.2 Kundalik, on the fateful day i.e. on 25/06/2007, the Appellant had gone to his shop at 08.00 a.m.

At 09.00 a.m. he returned home. He has further deposed that there was quarrel between the couple. This witness then tried to call P.W.1 Bharat. But he had already left for his business of selling Bananas on his handcart. P.W.2 has further deposed that the Appellant had gone back to his shop. The deceased had prepared lunch for the Appellant and handed over the tiffin to this witness to hand it over to the Appellant while going to the school. When this witness and his brother went to the Appellant's shop, the Appellant was not found there. Therefore, they left the tiffin there and proceeded to attend their school. According to this witness, thereafter, at about 12.30 p.m., the Appellant came to the school and gave him and his brother Rs.5/- each for buying lunch and then started proceeding towards their house. According to P.W.2, he and his brother suspected that the Appellant was going home and would start beating their mother. Therefore they followed him. It is his case that they stopped in the lane and saw their father's bicycle near the house. Then they returned to their school. This witness has further deposed that, in the lunch recess his brother Shivaji and

he himself came back to their house. Even at that time, they saw the Appellant's bicycle near their house. P.W.2 Kundalik then entered the house and saw that the Appellant had changed his clothes and was leaving the house. He saw that his mother was lying in a pool of blood inside the house. He saw the weapons and articles lying near her. P.W.2 Kundalik disclosed that, he informed their neighbour Jaggu Mavshi. He also informed his brother Shivaji and thereafter both of them rushed to inform the P.W.1 Bharat Mane. They came back to their house with Bharat Mane. P.W.1 went to the police station and gave information and the police thereafter recorded his statement.

12. Mr.Arjunwadkar, the learned counsel for the Appellant submitted that the evidence of this witness is full of omissions and the occurrence of events as narrated in his deposition, are highly improbable. The learned counsel Mr.Arjunwadkar further submitted that this witness was clearly tutored by P.W.1 and from the evidence, it was clear that, he was completely under

control of his maternal Uncle i.e. P.W.1 and therefore he was deposing as per the directions of the P.W.1. He has invited our attention to the admission in the cross-examination that this witness, P.W.1, had read his police statement before he deposed in the Court. Mr.Arjunwadkar submitted that there cannot be a more glaring instance of tutoring of a witness. Mr.Arjunwadkar further submitted that his evidence should be rejected and there was no other evidence against the present Appellant.

13. We have carefully gone through the evidence of this witness P.W.2. We find that the events narrated by him are improbable in the context of their daily routine. As far as motive is concerned, from the evidence of P.W.1 it is clear that the dispute about cooking meat was reasonably sorted out and the Appellant did not mind if meat was cooked after his dinner. The evidence of P.W.2 Kundalik does not show that on that particular day, the deceased had tried to cook meat. His deposition indicates that the quarrel which had started in the morning did not continue and the Appellant returned to his

shop. The deceased had even prepared lunch for the Appellant and had given the tiffin to P.W.2 for delivering it to the Appellant. This apparently shows that the quarrel was over. The Appellant had gone to his shop and the deceased had even cooked food for him. His evidence further shows that at around 12.30 p.m. the Appellant had been to their school and had given them Rs.5/- each for taking lunch. But this fact was not appearing in the statement of this witness recorded by the police and this omission from the police statement of this witness has remained unexplained. Even the story that this witness and his brother followed their father to their house, after they had taken Rs.5/- each from their father, was not mentioned in their statement before the police. The description of the clothes worn by the Appellant at that time was not given. Thus, these omissions from the police statement and the improvements made during his deposition lead to the conclusion that no such event had taken place at 12.30 p.m. and it is not shown that the Appellant had gone to his house at 12.30 p.m.

14. The evidence of this witness further shows that the lunch recess of this witness was from 02.30 p.m to 03.00 p.m. It is not his case that they used to return home for having lunch during their recess. It is his specific case that they used to go to their school at 11.30 a.m. and used to return at 05.30 p.m. Therefore there was no special reason for this witness to have returned home in the recess, which was from 02.30 p.m. to 03.00 p.m. It appears that this story was brought forth by the prosecution only to explain his presence in the house at that time which was a departure from their normal routine.

15. P.W.1 has deposed that, at 01.30 p.m., P.W.2 Kundalik approached him and told him that he had seen the Appellant with bleeding nose in their house and that there was quarrel between the Appellant and the deceased. P.W.1 has further deposed that he had been to the police at 01.30 p.m. and had gone there again at 02.00 p.m. Though he has corrected himself by saying that, he had visited the police station only once on that day. P.W.5 PI Dinkar Chandanshive has deposed that he had visited the spot at around 02.30 p.m. Therefore this timing

shows that P.W.1 and the police had already reached the spot before the P.W.2 had his recess at 02.30 p.m. Even giving concession for the time at which the P.W.1 and the police came to know about the incident, it does not match with the case of P.W.2 that he had returned home during lunch recess. The prosecution has not examined any witness to show that the lunch recess was not at 02.30 p.m. but was much earlier. This discrepancy, when viewed from the fact that the P.W.1 has not stated that P.W.2 Kundalik informed him that he had seen his mother lying in a pool of blood in their house; indicates that P.W.2 had not seen anything. P.W.2 has specifically admitted that it was P.W.1 who had told him that the Appellant had committed the murder of the deceased.

16. The prosecution has not examined any witness from the school to show at what time P.W.2 had attended the school and at what time he had left the school. The prosecution has not explained as to why any student would leave his class at 12.30 p.m. without any permission from the teacher. It was not very

difficult for the prosecution to lead evidence in that behalf to corroborate the story of this witness P.W.2. The prosecution has not examined Jaggu Mavshi who is referred to by both P.W.1 and P.W.2 and no explanation is offered as to why she was not examined. P.W.2 has admitted that there were surrounding houses near their house and there were shops near the shop of the Appellant and yet nobody from either of these localities is examined to corroborate the story of P.W.2 or even that of P.W.1. Thus, we find that there is absolutely no corroboration for the version stated by P.W.2 during the trial.

17. Another disturbing factor of this case is that P.W.2 has admitted that he had read his statement before the police before he deposed in the Court. This is a clear case of tutoring by the prosecution and not much credence can, therefore, be given to the evidence of this witness. In this context we rely on the case of *Nathu Manchhu Vs. State of Gujarat, reported in 1978 Cr.L.J. 448*, which was the judgment delivered by the full Bench of Gujarat High Court. It was observed in that case that though

the evidence of a witness, whose earlier police statement was read over to him before he stepped into the witness box, does not become inadmissible, but the probative value of the evidence of this witness is definitely affected. In the present case, we find that this evidence of P.W.2 is greatly affected by the fact that his police statement was read over to him before his deposition. He has also admitted during deposition that he was completely dependent on P.W.1 and therefore the possibility of tutoring is too strong to be ruled out. In such circumstances, we do not find it safe to rely on his evidence.

18. This witness P.W.2 has further stated that he had visited the police station about 03.00 p.m. with his maternal uncle P.W.1 when P.W.1 narrated the incident to the police. Even this story does not match with the version of P.W.1 which shows that he had gone to the police station at 01.30 p.m. itself. The record shows that the FIR was in fact lodged at 05.10 p.m. on 25/06/2007. This time of lodging of the FIR does not match with the story of either of these two witnesses.

19. The prosecution thereafter tried to prove that the Appellant had absconded after the incident and had stayed in a lodge at Vijapur overnight. To prove this fact, the prosecution has tried to bring on record the register of the lodge at Vijapur. But nobody from that lodge was examined and the register was not proved. No witness from the said lodge was examined to prove that the Appellant stayed there. The Appellant was arrested at about 09.10 a.m. on 26/06/2007 at Vijapur Police Station itself. The arrest panchanama Ex.30 shows that there were no signs of any injury on the person of the Appellant. Mr.Arjunwadkar the learned counsel for the Appellant rightly submitted that looking at the number and nature of the injuries on the deceased there were clear signs of struggle. There were defence injuries on her hands. The evidence of P.W.2 shows that she was a healthy lady. Therefore there should have been at least some minimum signs of struggle in the form of injuries on the person of the Appellant. Since there were absolutely no signs, it shows that the Appellant was not involved in the incident at all. We find considerable force in these submissions of Mr.Arjunwadkar.

20. The articles recovered from the spot of incident show that there were different kinds of weapons used in commission of murder. The learned counsel Mr.Arjunwadkar submitted that this indicates that there were two or more persons who had assaulted the deceased. All these articles including shirt and pant, found near the spot, showed presence of human blood and it was of blood group 'A'. But these articles were found at the spot itself. They are hardly of any consequence in proving prosecution case connecting the present Appellant.

21. The Appellant has taken a specific defence by submitting the written statement u/s 313 of IPC. According to him he had made the deceased discontinue her business of selling bananas on handcart because his own income was sufficient to maintain his family. According to him, she was upset because of this and her behaviour had changed. He has suggested in his statement that his wife could have developed some love affair with somebody, but he was not aware of it and

that person or persons must have committed her murder. He has also suggested that her relations with her neighbours were not good and there were frequent quarrels and possibly therefore his wife was murdered. At around 05.30 p.m. he came to know that his brother-in-law has given complaint against him and police were looking for him and therefore he got scared and spent that night in a nearby temple and on the next day, he surrendered before the police. He has denied that there was quarrel on the ground of cooking meat. In short his defence is of total denial and he has tried to explain certain facts in respect of the arrest and probable cause behind the murder.

22. Be that as it may be, as discussed earlier we find that the evidence led by the prosecution is lacking on material aspects. The evidence of P.W.1 and P.W.2 is not reliable and we do not find it safe to rely on their evidence to maintain the conviction of the present Appellant. In result following order :

ORDER

1. The Appeal is allowed.

2. The Judgment and Order dated 31/01/2009 passed by the Ad-Hoc Additional Sessions Judge, Solapur, in Sessions Case No.264/07, are set aside.
3. The Appellant is acquitted of all the charges.
4. The Appellant shall be released forthwith, if not required in any other case.

(SARANG V. KOTWAL, J.)

(A. A. SAYED, J.)