

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.582 OF 2002

Prakashsinha s/o Madhavsinha
Gadiya,
Age : 22 years, Occ: Labour,
R/o Gadera, Tal. Kapkot,
District Bageshwar
(Uttaranchal).

... **Appellant**
(Ori. Accused)

VERSUS

The State of Maharashtra,
(Copy to be served on Public
Prosecutor, High Court Bench
at Aurangabad).

... **Respondent**

...

Mr. V. C. Patil h/f S. M. Godsay, for the Appellant.
Mr. S. J. Salgare, APP for Respondent – State.

...

CORAM : T. V. NALAWADE AND
K. L. WADANE, JJ.

DATE: : 18th June, 2018

JUDGMENT (Per K. L. Wadane, J.):

1. This appeal is presented by the original accused No. 4 against the judgment and order passed by the Additional Sessions Judge, Shahada in Sessions Case No.16/2002, dated 24.09.2002, by which, the learned Additional Sessions Judge has acquitted other four accused persons and the appellant is held guilty for

the offence punishable under Section 302 of IPC and sentenced to suffer life imprisonment and to pay fine of Rs.1000/-.

2. The brief facts of the case may be stated as follows:

i) In the night intervening between 31.12.2001 and 01.01.2002 at about 2:00 a.m. the incident of assault had taken place. Wherein, the appellant alongwith other four accused persons alleged to have assaulted one Ramdas who later on succumbed to the injuries.

ii) On 01.01.2002 PW-1 Sakhubai Dhadge wife of the deceased Ramdas Dhadge lodged a report to the police station upon which Crime No. 1/2002 was registered against the appellant and four others. After registration of the crime, the investigating officer PW-15 - Hemant Kalyanrao Somvanshi, took the investigation and rushed to the spot of the incident. He prepared the inquest panchanama (Exh. 15) and dead-body was referred for the

postmortem. He prepared spot panchanama (Exh. 28). He seized the earth mixed with blood, simple soil, wooden rod from the spot. He recorded the statement of witnesses. He recovered the knife at the instance of present appellant under Section 27 of the Indian Evidence Act. The Muddemal articles were sent to chemical analysis and after receipt of its report and after doing as usual investigation, the investigating officer submitted the charge-sheet in the Court of J.M.F.C. Shahada, who in turn committed the case to the Court of Sessions at Shahada. A charge was framed against all the accused towards they have not pleaded guilty as such they went on trial. The evidence of the prosecution witness was recorded by the Additional Sessions Judge, the statement of accused under Section 313 of the Criminal Procedure Code, were recorded. After having heard the arguments of both the sides, the learned Additional Sessions Judge, delivered the judgment as referred above.

iii) Since the other four accused persons are acquitted from the charges leveled against them and the respondent-State has not presented any appeal, therefore, it is not necessary to discuss the evidence appearing against other accused persons and its evidentiary value. So the re-appreciation of the evidence only is restricted to the extent of the accused No. 4 – Prakashsinha i.e. the appellant.

3. At the initial, it is for the prosecution to establish that the deceased Ramdas met with an homicidal death rather this is undisputed fact that the deceased died due to the injury sustained to him. To establish this fact the evidence of PW-14 – Dr. Shankar Anantrao Bartake (at Exh. 76) is material, who deposed that on 01.01.2002 at about 5:00 am to 6:00 am a patient by name Ramdas Ghadge was brought by the police to the hospital. He was not in a position to talk. This witness started treatment to him but he died on the table. Subsequently, the postmortem is conducted by this witness Dr. S A. Bartake and on examination, Dr. Bartake found following external injuries on the

person of Ramdas.

- 1) CLW over forehead 6 x 2 x 1 cm. Injury to bone and brain – seen.
- 2) CLW over right eye lash 4 x 1 x 1 cm.
- 3) CLW above 1 cm. of last injury– 3x1x1 cm.
- 4) CLW – 5 x 1 x 1 cm., bone and brain injury seen.
- 5) CLW 5 x 1 x 1 cm. Bone and brain injury seen.
- 6) 1 x 1 cm. CLW.
- 7) Behind left ear CLW 3 x 1 x 1 cm.
- 8) Behind right ear – 7 x 1 x 1 cm.
- 9) ENT bleeding seen, nasal bone fracture seen.
- 10) Injury to right eye seen.

On Palpation depressed fracture frontal bone on right side, fracture of the nasal bone seen.

Dr. Bartake also noted following internal injuries :

- 1) Skull fracture (depressed),
- 2) Two skull fractures (sharp cut), the skull fracture behind the right ear was in vertical direction measuring 4 x 1 cm. He also noted cut injury to the brain tissue and presence of collection under the brain covers. He noted that all the injuries were

ante-mortem and cause of death is due to terminal cardiac respiratory arrest secondary to dangerous injury by the sharp edged weapon over the head exposing and injuring the brain severely. So the evidence of Dr. Bartake coupled with the finding noted in the postmortem report regarding the injuries its nature are sufficient to establish that deceased Ramdas died homicidal death.

4. The witness PW - 1 Sakhubai Ramdas Ghadge is the wife of deceased Ramdas who deposed that on 31.12.2001 at 3:00 hours PW- 5 and her father came their and awaken her they informed that the workers of Swami Garden Hotel are teasing the girl and thereafter, PW-5 Bayjabai and her father ran away. Thereafter, all the accused entered into the compound wall of China Hotel. Her husband prevented the accused persons from entering into the compound, then, these persons started to abuse and beat her husband.

5. Particularly, the accused Prakash was having big knife (sura) in his hand. Prakash i.e. the present appellant assaulted her husband by big knife on his

forehead. This witness further deposed that she remember name of present appellant namely Prakash, however, do not remember the names of remaining accused persons. The accused persons used to come to the hotel on Mohadi Road.

6. Next eye witness examined by the prosecution is PW-4 Pittu Dehlya Bhil (at Exh. 32). On perusal of his oral evidence it appears that he is a watchman in the hotel of Dipak Sheth in which the present appellant and other accused persons were residing there.

7. This witness further stated that on the day of incident, the present accused and other accused persons after consumption of liquor at about 2:00 hours in the night behaving in disorderly manner, therefore, this witness asked them not to behave in disorderly manner. Then the another accused No. 3 Chingchong beat him by stick. These witnesses further deposed that all the accused persons had woke up Rama Shama and asked him where those persons have gone and abused him. The witness had seen that the present appellant and other accused persons were assaulting Ramdas on his head by a

knife. On perusal of the evidence of PW-5 (Exh. 39) who also deposed that the present accused and other accused persons assaulted Rama by big knife. On perusal of the oral evidence of these three eye witnesses and looking to the cross-examination, it appears that there are minor contradiction and omissions in the oral evidence of these witnesses. Naturally such minor contradiction and omissions are bound to occurred. Since the time of noticing the incident by the witnesses is different. However, those contradiction and omissions are not material so as to discard the entire evidence of the eye witnesses more particularly when it was supported with the medical evidence and the other circumstances i.e. recovery of the deadly weapon at the instance of the present appellant.

8. Admittedly, the incident had taken place in the night, therefore, obviously question will arise how those witnesses i.e. eye witnesses are identified the appellant. On perusal of the evidence of PW-8 Narayan Ramchandra Thakur, it appears that he has prepared the map of spot panchanama. From the same it appears that the place where the deceased was residing is at eastern

side of Dhondaicha – Shahada Road and place of the Swami Garden Hotel is towards western side. So also the place of the residence of Bayjabai is also shown towards western side. However, it appears that the residential place of the PW -1 Sakhubai Ramdas Ghadge, PW-5 Bayjabai and the Swami Garden Hotel is in the same locality having short distance amongst each other. This is one of the circumstance indicating that the persons residing in the same vicinity may be acquainted with each other. More particularly the evidence of Pittu Bhil is very important who is the watchman in the hotel in which all the accused persons were serving as a waiter. Obviously when Pittu Bhil specifically states that the present accused has assaulted Ramdas with the help of knife of his head so there is no reason to disbelieve the oral evidence of this witness and particularly the identity of the present accused even though the offence took place in the night time.

9. Next important and strong circumstance appearing against the present appellant is that the recovery of the blood stain knife at his instance to prove the recovery of the deadly weapon at the instance of the accused. Prosecution has mainly relied upon

oral evidence of panch witness PW-9 Uttam Ravan Patil (at Exh. 49), Oral evidence of PW-15 Hemant K. Somvanshi (at Exh. 79), PSI and the investigating officer. PW-9 Uttam Patil deposed that on 03.01.2002, police called him at Shahada Police Station. Thereafter, police and panch witnesses and the accused Prakashsinha went to Dondaicha road by police vehicle. Present appellant asked to stop the vehicle near Swami Garden Hotel and went in the underground room. There were two boxes of water bottles. The appellant lifted those boxes and taken out a big knife and it was handed over to the officer. The recovery panchanama is proved vide Exh. 50.

10. Looking to the contents of the panchanama and the oral evidence of this witness - Uttam Patil, it appears that the place from where the present appellant took out the weapon and produced it before the panchas and police is not a public place, it is an underground room. Further it reveals that the weapon was hide beneath two water bottle boxes, therefore, the place where the weapon was hide was exclusively within the knowledge of the present appellant and the same cannot be treated as a place accessible to all.

11. It further reveals from the record that the knife recovered at the instance of the present appellant alongwith other articles seized in the matter including blood sample of Ramdas was sent to chemical analyzer for its examination and that is clear from the evidence of investigating officer as well as the police personal who had carried the articles to the CA. The CA report is on record which is at Exh.81. The article Nos. 1 to 4 which are the clothes of the deceased which were seized after postmortem report. Article Nos. 5, 6 and 7 are the articles i.e. the earth and wooden log seized from the spot panchanama. Article No. 8 is knife, Article No. 9 is a Sura and Article No. 10 is blood of Ramdas. The human blood was detected on the articles Nos. 1 to 5, 7 and 9. The blood was detected on the weapon i.e. Article No. 9 and its group is 'AB'. The blood group of the deceased Ramdas is also 'AB'. So this is very strong circumstance appearing against the present appellant and this is an additional circumstance to connect the accused with the crime. Therefore, if the medical evidence and the report of the chemical analysis is considered together with the ocular evidence of the PW Nos. 1, 4 and 5, the prosecution has established the offence leveled against

the accused No. 4-appellant.

12. On re-appreciation of the evidence on record, we do not find any reason to disturb the findings recorded by the learned Additional Sessions Judge. Consequently, there is no substance in the appeal, therefore, it is liable to be dismissed. Accordingly, it is dismissed.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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