

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

**CRIMINAL APPEAL NO. 126 OF 2003**

The State of Maharashtra ,  
Through PPHC, Aurangabad.

... Appellant

**VERSUS**

Namdeo Santu Badhe,  
R/o. Dauch Bk., Tq. Kopargaon,  
Dist. Ahmednagar.

... Respondents

.....  
Shri. S. D. Ghayal, APP for appellant  
Mrs R. V. Daxini, Advocate for respondent/State  
.....

**CORAM : T. V. NALAWADE &  
A. M. DHAVALA, JJ.**

DATE OF RESERVING THE JUDGMENT : 06.12.2017.  
DATE OF PRONOUNCING THE JUDGMENT : 09.02.2018.

**JUDGMENT (PER A. M. DHAVALA, J.) :-**

1. In Sessions Case No. 24/2000, learned Addl. Sessions Judge, Kopargaon by judgment dt. 24.10.2002 acquitted the respondent of offence punishable u/s 302 IPC. Hence, the aggrieved State has preferred this appeal.

2. The facts relevant for deciding this appeal may be stated as follows :

As per FIR lodged by PW1 Bhagubai, the widow of the deceased and the main eye-witness at Kopargaon Police Station on 04.08.2000 at 11:30 a.m., on the earlier day at 02:00 p.m., her husband Manaji had a quarrel with the accused Namdeo. Accused Namdeo is neighbour of deceased Manaji. He had cut a tree of Akesia (Vedibabhul). When deceased Manaji accosted him why he cut off his tree, the deceased abused him and inflicted blows of blunt side of spade on his skull. Manaji sustained bleeding injuries and became unconscious. PW1 Bhagubai, who was present there, was also abused and threatened. Then Manaji was taken in a private vehicle to the Civil Hospital at Kopargaon and information was given to the police. She was asked to bring medicines for her husband and then visit the Police Station but as her husband was not well, she lodged the FIR on the next day at 11:30 a.m.

3. On the basis of the same, the crime was registered at C.R. No.I-160/2000 for offence u/s 326, 504, 506 IPC and was investigated into. The investigation revealed that, Manaji was taken to Nashik and was admitted there on 04.08.2000 at 07:00 p.m. Thereafter, his discharge was taken on 08.08.2000 at 05:00 p.m. and he was admitted in hospital at Shirdi on 20.08.2000. He died due to the skull injury. Meanwhile, during investigation, PW7 ASI Namdeo carried out spot panchanama and collected ordinary soil and blood

mixed soil samples from the spot. The statements of material witnesses were recorded. Attempts were made to record the statement of injured Manaji but he did not regain consciousness. The accused was arrested and as per his voluntary statement, he discovered weapon of offence spade. Blood stained clothes of the injured were also seized. The medical papers were collected and after completion of investigation, the charge-sheet was submitted in the court. Accused no. 1 had a physical defect in one eye and one leg.

4. After filing of charge-sheet, in due course the case was committed to the court of Sessions. Ld. Addl. Sessions Judge, Kopergaon framed charge at Exh. 6. The accused pleaded not guilty. The prosecution examined 10 witnesses including PW1 Bhagubai, PW4 Kisan, PW6 Eknath (Brother), who were either eye-witnesses or came to the spot immediately after the incident. PW2, PW3 & PW5 are the panch witnesses. PW7 Namdeo, PW8 ASI Bhangare & PW9 are police witnesses and PW10 is a Medical Officer. The accused has denied the incident. It is the defence of the accused that there was enmity between him and the deceased and he had filed a criminal cases against PW6 Eknath, brother of the deceased as well as against the deceased. On the day of the incident, in the morning, deceased had picked up a quarrel with son of the accused and the accused

himself. The deceased had gone to Kopargaon of his own and he fell down and sustained injuries to skull by fall. It is claimed that the accused being aged 70 years and having only one eye and crippled with one leg, could not have assaulted the deceased. After considering the evidence, the Id. Addl. Sessions Judge, Kopargaon found material discrepancies in the medical evidence and ocular evidence and the ocular evidence was found to be not trustworthy. Hence the accused was acquitted. Hence, this appeal.

5. Ld. APP Shri. S. D. Ghayal has argued that, incident took place near the house of the deceased and PW1 Bhagubai being wife of the deceased was a natural witness. She has deposed consistently that the accused had cut a tree of the deceased. When the deceased accosted him, the accused had assaulted him with blunt side of the spade. The witness PW4 Kisan had been to the spot immediately after the incident. PW6 had seen the incident and they had taken the deceased in injured condition first to Kopargaon and thereafter to Nashik. There is corroborative medical evidence (Certificate Exh.35 and PM notes Exh. 41). The accused has discovered the weapon of offence spade. The spot panchanama has been duly proved by PW1 Pradeep. There was no reason to disbelieve PW1, PW4 and PW6. Hence, the judgment of the acquittal be set aside and the accused be convicted u/s 302 IPC.

6. Per contra, learned advocate Ms R. V. Daxini appointed at State expenses has supported the judgment of the trial court. She pointed out that the injuries sustained by the accused could not have been caused by the spade. The number of blows and number of injuries do not tally with the medical evidence. There are no blood stains on the spade. There was no reason for the accused to cut off acacia (Vedi babhul) tree and nobody objects for cutting off such tree. Evidence of PW4 and PW6 show that they are chance witnesses. They had not seen any incident. There is delay of 21 hours in lodging the FIR. The Id. trial Judge has rightly appreciated the evidence on record and has given cogent reasons to disbelieve the prosecution evidence. Hence, no interference is called for.

7. The points for our consideration with our findings thereon are as follows :

| <b>Sr.No.</b> | <b>Point</b>                                                 | <b>Finding</b>           |
|---------------|--------------------------------------------------------------|--------------------------|
| 1             | Whether the deceased Manaji met with homicidal death?        | In the affirmative.      |
| 2             | Whether the accused has committed murder of deceased Manaji? | Not proved.              |
| 3             | What order?                                                  | The appeal is dismissed. |

**REASONS**

[I] **Point No. 1** : PW10 Dr. Ashok Kamble has examined Manaji on 03.08.2000 at 03:00 p.m. at Municipal Hospital at Kopergaon. He noticed following injuries on his person.

- (i) Incise injury over forehead, horizontal in direction  $5\frac{1}{2}$  x 1 x bone deep with partially bone cut and periosteum cut, edges are sharp and clear with angle of injury is acute oval in shape profuse, bleeding ++.
- (ii) CLW over left side occipital region  $2\frac{1}{2}$  x  $\frac{1}{2}$  x bone deep, bleeding ++.
- (iii) Contusion on left forearm, horizontal 4 x  $\frac{1}{4}$  skin was red in colour.
- (iv) Contusion on left hip joint laterally 5 x 2 cm with red skin).

[II] On 20.08.2000, he performed post-mortem on the dead body of Manaji. As per his post-mortem report Exh. 42, there were two wounds on the skull one over frontal region  $5\frac{1}{2}$  cm. in length and other on occipital region obliquely vertical on left side 2 cm. in length. Since the injuries were sutured, the other details are not there. The evidence shows that, on 03.08.2000 at 02:00 p.m. deceased Manaji sustained injuries. There was sub-dural internal

haemorrhage and he became unconscious. He was shifted to Rural Hospital, Kopargaon and thereafter to NMS Hospital, Nashik. Thereafter, he was brought to Shirdi Hospital but he did not regain consciousness and he succumbed to the injuries on 19.08.2000. The evidence shows that, Manaji died due to shock due to head injury with sub-dural haemorrhage. The viscera was preserved but the cause of death remains the same. There is no dispute that, deceased Manaji met with a homicidal death. Hence, point no. 1 is answered accordingly.

[III] The main issue is whether the accused was author of the injuries or not. The prosecution has examined PW1 Bhagubai, PW4 Kisan and PW6 Eknath as eye-witnesses.

8. PW1 Bhagubai has deposed that, the accused was her neighbour but they were not on talking terms for more than 20 years. PW6 Eknath was real younger brother of deceased Manaji who was leader of the group and was controlling the activities. He had provided job to deceased and was looking after the household affairs of Manaji. PW1 has admitted that, the accused had filed one case against her husband and her husband was in jail for two days. PW6 Eknath stood surety for his brother Manaji and her husband was acquitted about six months before the incident.

9. The accused by way of suggestions admitted that there was some incident between him and deceased Manaji. It was suggested that on that day in the morning, Dada, son of the informant was cutting grass in his plot and that time there was verbal exchange between Dada and the deceased Manaji. There was some incident which continued for about 15-20 minutes between deceased Manaji and the accused. The evidence shows that the accused was aged 65 years and was crippled with one leg. He had only one eye but he was 6 ft. tall. He was elder to the deceased Manaji. The evidence also shows that deceased Manaji was aged 70 years. He had also only one eye. The observation of Id. trial Judge that Manaji was hale and hearty and was physically in better condition, cannot be accepted in the light of the above facts.

10. According to PW1 Bhagubai, on one day prior to Nagpanchami, at about 02:00 p.m. when she was present on her otta and her husband was in the courtyard, the accused cut a branch of acacia tree (Vedi babhul) from her compound. He also abused deceased Manaji. The deceased had accosted the accused and as a result the accused inflicted a blow of spade on his skull by blunt side of spade. She stated that the accused inflicted three blows of spade and then her husband became unconscious. The accused had

threatened her and abused her. The accused was taken by Kisan (PW4), Shankar and Eknath (PW6) to the hospital on the bike of Eknath. As there was no improvement even on next day, her husband was shifted to Nashik where he was admitted for treatment. Thereafter, he was brought to Shirdi hospital but after some days he died in the hospital. PW1 Bhagubai has identified the spade (Court article no.5) as the weapon of offence. She has identified the blood stained clothes of the deceased seized by police (article no.1 Dhoti and article no. 2 Baniyan).

11. PW4 Kisan is examined to support PW1. His evidence shows that he was serving in Paper Mill at Kolpewadi and his duty hours were from 04:00 a.m. to 12:00 p.m. He reached his house at 01:00 p.m. and the incident took place between 01:00 to 02:00 p.m. When he was returning from duty, he noticed that, Manaji was lying in front of his house and he had a bleeding injury on his head. He had not seen the injury. He admitted that, at the time of incident he was at his house but he had heard the verbal exchange between the deceased and the accused and thereafter he came out. He admitted that he had seen the accused armed with spade and the quarrel took place on account of cutting off acacia tree (Vedibabhul). He stated that, Shankar was also present there. He stated that, thereafter Manaji was taken on the bike of Eknath to Kopergaon which is about

5 kms. away from the place of incident Douch. He admitted that, he had not disclosed to the police that the accused had assaulted the deceased by means of spade in his presence. The cross-examination of PW1 reveals that, the plot of the accused is not adjacent to her plot. Her house is situated on her plot of 11 gunthas. Similarly the accused is also having a plot of 11 gunthas with his house there. In between, there is plot of 11 gunthas of one Sabaji. Thus, there could not be any boundary dispute between the accused and the deceased as their plots are separated by plot of one Sabaji. PW1 has admitted that, nobody objects for cutting off branches of acacia tree (Vedi babhul). She stated that, house of accused was 50-60 ft. away from her house. PW4 has admitted that, he has not witnessed the incident. He was in paper mill and his evidence is not helpful to the prosecution to connect the accused with the crime.

12. PW6 Eknath is brother of deceased Manaji. He was residing at a far away distance. PW1 admitted that, Eknath had secured a job for deceased Manaji in Sanjivani Sugar Factory. She has admitted that at the time of incident she was alone present. She admitted that, adjacent to her plot, there is plot of Jagannath Gaikwad and there were houses of Changdeo and Thakaji. After crossing their houses, there are houses of PW4 Kisan, Sarjerao and one Ganpat. PW6 Eknath admitted that, his house is 1000 ft. away

from the house of Manaji. In either case, Eknath could not have witnessed the incident. His evidence that, he heard the abuses and then came to the spot and saw the accused assaulting the deceased by means of spade from blunt side cannot be believed. It is quite probable and natural that, after the assault PW1 Bhagubai must have called Eknath for taking Manaji to the hospital. PW6 Eknath has admitted that, on the date of incident he was present in the court at Kopergaon. He stated that, after the incident, within 15 minutes he reached the hospital. I therefore find that, PW1 Bhagubai is the only witness whose evidence needs appreciation as an eye-witness for involvement of the accused.

13. There is no dispute that, deceased Manaji was having enmity with the accused. The accused is old person aged just above the age of the deceased Manaji. He was crippled with one leg and he had only one eye. Similarly, the deceased Manaji was also having one eye and he was aged 65 years. Admission of PW1 that, he was hale and hearty cannot be accepted. PM notes column no. 9 shows that, deceased Manaji had lost his last four fingers of left hand.

14. Since the accused and deceased were not neighbouring plot owners, there was no question of any boundary dispute. Even if it is assumed that, the accused had cut branch of acacia tree belonging to

the deceased, it could not have been a cause for quarrel which may end into a murder.

15. Besides, the fact that the accused had cut off a acacia tree indicates that he would be armed with axe and not a spade as nobody uses spade for cutting tree or its branch. It is difficult to believe that, the accused would have used axe for cutting the tree kept it aside and taken a spade for attack. PW1 Bhagubai has deposed as per her FIR that the accused had given blows of blunt side of spade on the skull of her husband Manaji. The FIR is silent about the number of blows whereas in her evidence she stated that three blows were given. It is tried to be highlighted as a material contradiction. We do not find that it is a material contradiction. The FIR shows that, there was assault on skull by spade by the accused. It does not show that there was single blow given.

16. However, we find doubt as to whether the report dt. 04.08.2000 can be said to be FIR or not. The evidence of PW10 Dr. Ashok Kamble shows that, on 03.08.2000 at 03:00 p.m. Manaji was brought to the Rural Hospital. He was sent by Police with requisition letter and he had noted following injuries.

- (i) Incise injury over forehead, horizontal in direction  $5\frac{1}{2}$  x 1 x bone deep with partially bone cut and periosteum

cut, edges are sharp and clear with angle of injury is acute oval in shape profuse, bleeding ++.

- (ii) CLW over left side occipital region  $2\frac{1}{2} \times \frac{1}{2}$  x bone deep, bleeding ++.
- (iii) Contusion on left forearm, horizontal  $4 \times \frac{1}{4}$  skin was red in colour.
- (iv) Contusion on left hip joint laterally  $5 \times 2$  cm with red skin).

17. As per certificate Exh. 41, the police were informed that Manaji had sustained serious injuries. He was unconscious and was admitted in the hospital. Naturally the police would have visited the hospital for recording dying declaration and could have made inquiry with his relatives or the persons accompanying him to the hospital. Then in that case, the FIR should have been registered on 03.08.2000 itself. The certificate Exh. 41 shows that, the incident had taken place at 01:00 p.m. and Manaji was admitted in the hospital at 03:00 p.m. It is difficult to believe that the police would not have taken any steps from 03.08.2000 at 03:00 p.m. to next day 11:00 a.m. Pertinently, the Police Station, Kopergaon is at a distance of two minutes walk from the Municipal Hospital at Kopergaon. The evidence of Bhagubai that her husband was serious and therefore she preferred to attend him rather than going to the Police Station to

lodge the FIR can be accepted. But, there is no explanation why the Police did not go to the hospital and did not make efforts to record the dying declaration or register the FIR. There are no documents to show that such efforts were made by the police.

18. If the police had given list for medical treatment to Manaji on 03.08.2000, the question arises how a similar list was given by police on 04.08.2000. As per Exh. 31, surprisingly this letter from Police Station Kopergaon to the Medical Officer bears the signature of deceased Manaji Badhe, which is highly suspicious. At the relevant time, Manaji was already in the hospital for around 12 hours and as he was not improving, he was being taken to Nashik for better treatment. If deceased Manaji was in position to sign on 04.08.2000 as per evidence of PW7 ASI and requisition Exh. 31, then his dying declaration should have been recorded and it is not produced. In that case, it is a clear suppression of material evidence.

19. Besides, it is noticed that, according to PW1 Bhagubai the incident took place at 02:00 p.m. whereas; the certificate Exh. 41 shows time of incident as 1:00 p.m.

20. The Medical Officer Dr. Ashok Kamble has deposed that, the incised wound could not have been caused by the spade either

from sharp side or from the blunt side. We find substance in opinion that, the spade cannot cause incise wound whereas; the other three injuries CLW and two contusions could have been caused by blunt side or by the handle of spade.

21. As per evidence of PW1 Bhagubai, the accused had given three blows whereas; there are four injuries. All the blows were given on skull but one injury is on left forearm and one is on left hip. Injury on forearm can be explained as it is quite possible that, one of the blows on the skull might have been warded off by the deceased by putting his forearm over the head but there is no reference to the injury to the hip in the evidence of PW1 Bhagubai. The nature of injuries as per evidence of PW10 Ashok indicates that, deceased Manaji was assaulted by two different weapons and probably by two different persons but PW1 has deposed about assault by the accused only. She has admitted that, she had not sustained any injury. No blood stained clothes of the accused were recovered. Though the accused has discovered the spade, it was long after the date of incident and it showed no blood stains. Therefore, the discovery does not connect the accused with the crime. There was long standing enmity and filing of criminal cases by the accused and deceased Manaji against each other. In the light of all these facts, the evidence of PW1 Bhagubai is not free from suspicion. Besides, as per

her report Exh. 16, the deceased was taken to the hospital in a public vehicle whereas; she and other witnesses have stated that, Manaji was taken to the hospital on a bike of Eknath and PW1 Bhagubai had helped him. When Manaji was unconscious, it is difficult to believe that he could have been taken to the hospital on a bike. The facts indicate that the witnesses are not coming forward with true facts. They are suppressing certain facts. There is no reason why treatment to Manaji was not continued at Nashik. After carefully considering the evidence on record, we find that if the trial Judge entertained some reasonable doubt about the prosecution case, it is a reasonable and probable view. In such case, the appellate Court cannot interfere with view taken by the trial Court. Hence, the appeal deserves to be dismissed.

22. We answer the points accordingly and dismiss the appeal.

**[ A. M. DHAVAL ]**  
**JUDGE**

**[ T. V. NALAWADE ]**  
**JUDGE**

Punde