

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

CRIMINAL APPEAL NO. 741 OF 2016

Vilas S/o Sahebrao Aher,
Age: 39 years, Occ: Nil,
R/o: Nurma, Post Pachod,
Taluka Paithan, District Aurangabad

... Appellant
(Ori. Accused)

Versus

The State of Maharashtra,
Through the Police Inspector,
M.I.D.C. Paithan Police Station,
Taluka Paithan, District Aurangabad

...Respondent

...

Mr. V. H. Dighe, Advocate for Appellant-Accused (Appointed).
Mr. D. S. Jape, APP for Respondent – State

...

**CORAM : T.V. NALAWADE &
SMT VIBHA KANKANWADI, JJ.**

DATED : 21st SEPTEMBER, 2018.

ORAL JUDGMENT :- (Per : Smt. Vibha Kankanwadi, J.)

Present appeal has been filed by appellant-original accused under Section 374 of the Code of Criminal Procedure, 1973 (Cr.P.C.) challenging his conviction for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC) by Additional Sessions Judge, Aurangabad, in Sessions Case No. 296 of 2014, on 30-08-2016.

2. Brief facts of the case are as follows :-

The informant – Rohan Vilas Jodnar has is son of deceased Vilas Jodnar. Rohan was residing in Jayakwadi (North), Taluka Paithan, District Beed. He was residing with his maternal uncle Babasaheb Walhekar, as his mother had expired in his childhood. His father was residing alone in the house situated near Aahilyabai Holkar Chouk, at Pimpalwadi. Rohan was on visiting terms with his father. His father was a labour and he had come to meet Rohan on 08-06-2014. His father had given some amount to him and then returned back. Rohan received a telephone call around 8.30 p.m. on 11-06-2014 by one Santosh Bhise of Pimpalwadi, informing that Vijay Jodnar is found lying on the ground in Jayakwadi, therefore, Rohan went to Jayakwadi and searched his father in the garden of coconut trees. He could not find his father. His father was addicted to liquor. Therefore, he was under impression that his father may be lying somewhere, therefore, he slept in the house of his maternal uncle. After getting up in the morning on the next date, he searched for his father, at that time, it was informed to him that his father was found lying in front of the house of Suresh Pardhi. He went to house of Suresh around 7.30 p.m. at that time Suresh and his family and other persons were present. It was informed to him that Vilas Sahebrao Aher i.e. present appellant used to demand amount from Vilas Jodnar for consuming liquor. Whenever Vilas used to refused to give amount, accused-

appellant used to beat Vilas Jodnar with fist and kick blows. Vilas Aher had assaulted his brother-in-law by means of iron rod about two years ago. On that count also, Vilas Jodnar had not given any complaint against accused with Police. Suresh Pardhi and his wife disclosed Rohan that they had seen accused assaulted in front of their house. Accused had made Vilas Jodnar lying on the ground and sat on his chest. He assaulted him by iron rod. Accused had also danced on the body of Vilas Jodnar. Suresh Pardhi and his wife tried to intervene, but Vilas Aher i.e. accused not in a mood to listen. Suresh and his wife showed place of incident to Rohan. There he found blood stains and it was in front of house of Suresh Pardhi. Police arrived at the spot and made enquiry. Suresh and his wife disclosed about the incident. Rohan introduced himself as a son of deceased and it was informed to him that his father was taken to GHATI Aurangabad at night time. Police took Rohan at GHATI, Aurangabad and showed dead body of his father in the most mortem room. He had seen injuries on the person of his father. Thereafter, he lodged First Information Report (FIR). On the basis of said FIR, offence vide Crime No. 63 of 2014 came to be registered under Section 302 of the IPC and further investigation was undertaken.

3. Prior to FIR, Accidental Death (AD) No. 16 of 2014 was registered. Inquest panchnama was executed with the help of two panchas and dead body was sent for post mortem. After

post mortem was carried out, clothes on the person of deceased were seized under panchnama. After FIR was registered, panchnama of the spot was carried out. Accused came to be arrested, clothes on his person came to be seized by drawing panchnama. Statements of the witnesses were recorded. While in police custody, accused made statement before panchas and police that he would discover the iron rod, used in the commission of offence. Thereafter, he has led discovery of iron rod from his house. Said article was seized. After collecting seized articles, they were sent for Chemical Analysis (CA). Post mortem report was collected. CA Reports have also been collected. After completion of investigation, charge-sheet came to be filed. Accused was in jail from 13-06-2014 i.e. from the date of his arrest.

4. Accused has been produced before learned trial Court from time to time. After he was produced before the learned trial Court, charge was framed vide Exhibit-5. The contents of the charge were read over and explained to the accused. He claimed not guilty, and therefore, trial has been conducted. The prosecution has examined in all (10) witnesses in order to bring home the guilt of accused.

5. Taking into consideration the evidence on record, statement of the accused under Section 313 of the Cr.P.C. and

after hearing both sides, the learned Additional Sessions Judge, Aurangabad has come to the conclusion that the prosecution has proved that the accused has committed murder of Vilas Jodnar, therefore, he has been sentenced to suffer Imprisonment for life and to pay a fine of Rs.2000/- (Rs. Two Thousand) in default of payment of fine he has to suffer further Rigorous Imprisonment for (01) month for the offence punishable under Section 302 of the IPC. This order of conviction is challenged in this appeal.

6. Heard Mr. V. H. Dighe, learned counsel appointed for the appellant and Smt. D. S. Jape, learned APP for respondent - State. Perused the record and proceedings.

7. P.W.2 Rohan Vilas Jodnar is the informant. He has deposed as per FIR (Exhibit-27). Admittedly, he was not present when incident took place. Learned Advocate for the accused has tried to bring to our notice statement in the cross-examination that Rohan had not given his phone number to Santosh Bhise. P.W.3 Santosh Vishwanath Bhise, in his cross-examination, stated that he had not stated before police that he had made phone call to Rohan. Therefore, how Rohan came to know about something as happened to his father has not been properly proved. We do not accept this point. How Santosh would have fetched phone number of Rohan is not material fact.

8. The important witness in this case is P.W.6 Smt. Parubai

w/o. Suresh Bosale. It appears that she has given her surname as Bhosale at the time of deposition, however, at every places she as well as her husband has been addressed as Suresh Pardhi and his wife. In her cross-examination a specific question to that effect has been asked and she has stated that she can not assign any reason as to why word "Pardhi" is mentioned in the name of her husband. In fact, in the FIR, name is mentioned as "Suresh Pardhi", but, it is not in dispute that she is the neighbour of deceased Vilas. It is apparent from the situation stated in the spot panchnama (Exhibit-23). It has been brought through P.W.1 Surendra s/o. Uttamrao Kamandar. The map drawn in the spot panchnama (Exhibit-23) also shows that there was house of Suresh Pardhi adjacent to the house of deceased, only common wall is there and the spot is shown in front of the door of house of Suresh Pardhi. Therefore, the difference in the surname has no adverse effect on the prosecution story.

9. It will not be out of place to mention here that, in the spot panchnama, it is specifically stated that the blood was found on the spot. Sample of the same has been taken. There is nothing to disbelieve in the testimony of P.W.1 Surendra and in his cross-examination. Therefore, the prosecution has proved the place of offence beyond reasonable doubt. P.W.6 Parubai has deposed that at about 8.30 a.m. when her entire family was in the house, they heard shout in front of the house. Therefore, they came out

of the house. They saw accused was assaulting Vilas Jodnar by means of iron rod. Accused had made Vilas to fall on the ground and he was dancing on his person. They had tried to separate the accused, but, he did not listen. Therefore, she and her husband went to one Commandar and narrated the incident. That Commandar asked them to go to police station, therefore, they were proceeding towards police station, but they met Santosh Bhise on their way. Then, they narrated the incident to him. Santosh Bhise asked them to go to spot. Testimony of P.W.3 Santosh Bhise is corroborating to P.W.6 Parubai on this point.

10. Now, testimony of P.W.6 Parubai has been attacked on the ground that as per her testimony, she had gone to police station with her husband, then why her information was not reduced into writing and has not been treated as FIR. It is to be noted that in the cross-examination this fact has been got clarified by the accused himself. She has deposed that nothing was got written by the police from them. That means, even if narration was given by them, police did not take anything in writing. Under such circumstances, they can not be blamed. They had done their duty.

11. It will not be out of place to mention here that from the evidence of all these witnesses, the fact has not been brought

on record by the accused that there was any kind of enmity between deceased and accused or these witnesses and accused, so that, he could have been implicated. Thus, there was no reason for these witnesses to speak against the accused. P.W.4 Shaikh Bilal s/o. Shaikh Isak is Up-Sarpanch of the village. He says that he received phone call of P.W.2 Santosh Bhise. P.W.5 Ashok s/o. Keshav Chabukshwar is Police Patil, who had then made arrangement to take Vilas Jodnar in the hospital at Paithan. Thus, all witnesses are corroborating the fact and forming chain as to how they helped each other after P.W.6 Parubai and her husband had informed about the assault given by the accused to the deceased. No doubt, in this case, husband of P.W.6 Parubai has not been examined. But, it is not fatal to the prosecution and it would have only at the most multiple evidence. At the cost of repetition, it can be seen that eye witnesses is certainly supporting the prosecution case.

12. Other circumstance, which has gone against the accused, is discovery of iron rod. Prosecution has examined P.W.7 Bandu s/o. Ravan Solat to prove the same. He has stated that statement was made by the accused that he would discover the iron rod, which he had concealed in the room adjoining to his house. Thereafter, accused had led the discovery. He had taken them in one room towards Western side of his house, which was in dilapidated condition. Accused had taken out one iron rod

from one corner of the room. There were blood stains on the said iron rod. Now it appears that this witness has tried to say that panchnama was not drawn at the same spot. Therefore, to that extent only he has turned hostile. Permission was granted to put the questions in the nature of cross-examination to this witness. In the cross-examination, he admitted that the seizure panchnama was prepared on the spot of incident in his presence. Searching cross-examination this witness has been taken by accused, in which at one place he says that they did not go to the house of accused. They had not made any enquiry about ownership of the said room. According to him, they had gone to that place around 6.30 p.m. There was no electricity in the said room. Except the said omnibus statement, there is nothing in the cross to discard his testimony. Said omnibus statement can not be relied upon and it has to be taken in the totality of his evidence. Therefore, it can be said that the discovery has been proved by the prosecution under Section 27 of Indian Evidence Act, beyond reasonable doubt.

13. Even if, for the sake of arguments, it is accepted that this witness has turned hostile in toto, yet said panchanama has been proved through investigating officer. Said iron rod was sent for CA. There was no blood stains on the iron rod. CA Report shows that blood was of human and it was of blood group 'A' as per the CA report (Exhibit-52). As per CA report (Exhibit-53), blood of

the deceased was of 'A' group. As per the CA report (Exhibit-54), blood of the accused is of 'O' group. The question in respect of CA report was put to the accused in his statement under Section 313 of the Cr.P.C. But, he has not given any explanation as to how blood group 'A' has been found on the iron rod.

14. Further, prosecution has also examined P.W.8 Sandeep s/o. Laxman Thombare to prove the seizure of clothes of accused. They can be connected to CA report (Exhibits-52 to 54). Clothes on the person of accused had blood stains of 'A' group. Therefore, above said evidence sufficient to prove involvement of the accused in the crime.

15. Testimony of P.W.9 Dr. Sandeep s/o. Vyankatrao Haridas would show that at the time of conducting post mortem report, he found in all (23) injuries on the person of deceased. Many of them are – abrasion, laceration, contusion. Internal examination showed hematoma of size 13 x 10 c.m. over right occipital region. Further, internal examination of chest showed fracture to right second to eighth ribs near costo-chondral junction. On the left side sixth to eighth ribs fractured in posterior axillary line. Further towards sixth to eighth ribs were fractured in posterior axillary line. Taking into consideration all these injuries, he had opined that cause of death was "*Hemorrhagic Shock due to chest trauma*". All injuries were ante-mortem. Some of the external

injuries were corresponding to internal injuries. He had opined the injuries mentioned in column Nos. 17, 19 and 20 of the post mortem report are possible due to assault by rod and by dancing on the chest on the person who was lying on the ground. There is nothing in the cross-examination which will discard the opinion by expert. Thus, the prosecution has proved that death of Vilas Jodnar was homicidal in nature.

16. Taking into consideration the evidence of P.Ws. 1 to 8 and 10 together with evidence of P.W.9, it is concluded that only with intention to commit murder of deceased, accused had assaulted him. When there is direct evidence and it has been proved beyond reasonable doubt, absence of proof of motive does not assume importance. Therefore, learned trial Court has rightly convicted the accused of the offence punishable under Section 302 of the IPC. It was the only possible view that could have been taking into consideration the evidence that has led in the matter.

17. For the reasons stated above, there is no merit in the present appeal and it deserves to be dismissed. Hence, we proceed to pass the following order :-

ORDER

- (a) The appeal is hereby dismissed.
- (b) Fees of the learned counsel appointed on behalf of the appellant-accused is quantified at Rs.5000/- (Rs. Five Thousand Only) which is to be paid through High Court Legal Services Authority, Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI, J.)**(T.V. NALAWADE, J.)**

MTK.