

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

CRIMINAL APPEAL NO.219 OF 2013

Bapu Namdeo Kadam	]	
Age about 35 years, Occ: Labourer,	]	
R/o: Village Sonke, Taluka: Pandharpur,	]	
Dist: Solapur	]	
(and at present in judicial custody and	]	
lodged at Yerwada Central Prison, Pune)	]	..Appellant
		(Org. Accused No.1)

Versus

The State of Maharashtra	]	..Respondent
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Mr. D. G. Khamkar, Advocate for the Appellant.
Mr. V. V. Gangurde, APP for the Respondent - State.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 4th JULY, 2018**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Being aggrieved by the judgment and order dated 31st December 2012 passed by the learned Additional Sessions Judge, Pandharpur in Sessions Case No.57 of 2008, thereby convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code ("IPC" for short) and sentencing to suffer imprisonment for life and to pay fine of Rs.5000/- and in default to undergo rigorous imprisonment for three months.

BGP.

2] The prosecution story in brief as could be gathered from the material placed on record is thus :-

On 18th December 2007 at around 4.50 p.m., PW-10 – Shankar Jirge P.I. Pandharpur Taluka Police Station received information on phone that the Appellant had assaulted his wife with sickle. PW-10- Shankar Jirge, P.I. therefore recorded the information in the station diary Exh.55 and proceeded to the spot of offence alongwith Panch witnesses and photographer. When he reached on the spot, deceased Sunita was lying in pool of blood. Her father, children and neighbours were there. PW-10 – Shankar Jirge, P.I. recorded the complaint of the father of deceased Sunita namely Vilas Shinde. The First Informant - Vilas Shinde, since deceased could not be examined as witness. In the First Information Report, he has stated about ill-treatment, which was meted out to his daughter Sunita and grandchildren. It is sated in the FIR that the Appellant used to assault deceased Sunita under the influence of liquor. It is further stated in the FIR that the First Informant and his wife had gone to the house of deceased on 15th December 2007. On 16th December 2017, the Appellant came home after consuming

liquor and started abusing and assaulting the deceased. He further states that the Appellant had suspicion that the deceased was having illicit relationship with others. He states that on 18th December 2017, his wife had gone to Solapur. The First Informant had gone to the house of elder brother of the Appellant, namely Subrao. At around 4.15 p.m., he received an information that the Appellant had cut throat of the deceased. After he went home, he found that there were serious injuries on the person of the deceased and she was lying in pool of blood. At that time, son of the Appellant and the deceased, Ravindra informed the First Informant that the Appellant had assaulted the deceased with sickle. On the basis of the First Information Report, a crime came to be registered being Crime No.285 of 2007 for the offence punishable under Section 302 of the IPC. Upon completion of investigation, a charge-sheet came to be filed in the Court of learned JMFC. Since the case was exclusively triable by the learned Sessions Judge, the same came to be committed to the learned Sessions Judge and therefore, charge came to be framed vide Exh.4. The accused pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned Trial Judge passed the aforesaid order of conviction and sentence.

3] Mr. D. G. Khamkar, learned counsel for the Appellant submits that the conviction is based only on the basis of sole testimony of the child witness. He submits that the possibility of child witness being tutored, cannot be ruled out. He further submits that in the First Information Report, it is stated that the information was given to the First Informant by the son of the Appellant/deceased namely Ravindra. However, he has not been examined. Learned counsel submits that in any case, the case would not fall under Section 302 of the IPC and at the most either under Part I or Part II of Section 304 of the IPC, since the prosecution has failed to prove that the deceased had an intention to cause the death of the deceased.

4] PW-3 – Rameshwar Khatavkar has conducted autopsy on the body of the deceased. From his evidence as well as postmortem report, it would reveal that the deceased had sustained following injuries :-

- “1. Incised wound over neck left side from chin to mastoid process 20 x 4 x m 4 cms. bone deep.

2. Incised wound over chin 3 x 2 x 2 cm.
3. Incised wound right arm anterior aspect 5 x 2 x 2 cms.
4. Incised wound right arm posterior aspect 5 x 2 x 2 cms.
5. Incised wound over supra clavicular region 3 x 1 x 1 cms. and 1 x 1 x 1 cms.
6. Incised wound left ear lobe 1 x 1 cms.
7. Incised wound right submental region 5x2x2 cms.
8. Incised wound left occipital region 4 x 1 cms.

Injury No.1 is suggestive of fracture mandible and larynx. All injuries were ante-mortem. He also observed.

1. Carotid artery vagus nerves jugular vein are cut on left side.”

The cause of death given is “terminal cardiorespiratory failure due to cut Neck left side & injury to vital organs (carotid artery, vagus nerve & Jugular Vein)”.

5] The present case rests mainly on the testimony of child witness PW-8 – Ranjana Kadam. Her deposition is at Exh.61. Perusal

of Exh.61 would reveal that prior to the recording of evidence of PW-8 – Ranjana Kadam, learned Trial judge has asked certain questions to her. After she answered the questions properly and stated that she understood the consequences of oath, the deposition was recorded on administering oath to her.

6] She states in her evidence that she is studying in 7th standard at Oondergaon. Since last five years, she was residing at Oondergaon. Prior to that she was residing at Sonke alongwith her brother and and parents. Rajendra is her elder brother and Ravindra is her younger brother. She stated that two maternal uncles were residing with her and her grandparents are expired.

7] She has stated that when she was residing at Sonke with her parents, her father used to raise quarrel and used to beat her mother under the influence of liquor. When she was in Sonke, she was in 2nd standard. On the day of incident, she had not gone to the school as her grandparents had come to Sonke. That day, her parents, parents of her mother and brothers were in the house. Her grandfather had gone for tea to the neighbours house. She again

stated that he had gone to the house of her uncle. Her grandmother had gone to bus stop, as she was going to Oondergaon. She was helping her mother in cleaning utensils in the courtyard below tree. Her father came from behind and assaulted her mother with sickle. Her father gave blows of sickle on her neck, shoulder, and hands. She sustained bleeding injuries and succumbed to the injuries on the spot. Thereafter her father ran away on bicycle. She cried and called sister of her father. Thereafter many people gathered there and her grandfather also came there. She states that her brother Rajendra had gone to the school, therefore, he was called from the school. When her grandfather came, while crying she told entire incident to him. Her maternal uncle came at Pandharpur at about 7.00 p.m. She told entire incident to her maternal uncle.

8] She has been thoroughly cross-examined, however, in her evidence, nothing damaging has come on record. She has specifically denied that she was deposing as told by her maternal uncle. Though there are minor contradictions in her evidence in so far as the main incident of assault is concerned, her evidence has gone unchallenged. She has specifically denied suggestion that her

mother was angry and hot tempered woman. She has admitted that always there were quarrels between her father and mother. The defence of alibi has been specifically negated in her evidence.

9] The evidence of PW-8 – Ranjana Kadam is corroborated by the medical evidence. It is further corroborated by the First Information Report.

10] The conviction can be based on the sole testimony, provided that such a evidence is found to be truthful, cogent and reliable. On scrutiny of the evidence of PW-8 – Ranjana Kadam, we find that her evidence is reliable, trustworthy and cogent. We are therefore of the considered view that the prosecution has proved beyond reasonable doubt that it is the Appellant, who is the author of the crime.

11] In so far as the contention of the Appellant that the offence needs to be altered to a lesser offence is concerned, we find that the contention in that regard is without substance. Without any provocation, when the deceased was cleaning utensils, the Appellant

came from behind and assaulted on her neck by sickle and also caused other injuries on the other parts of the body. We do not find that the case would fall in any of the exceptions of Section 300 of the IPC to convert conviction under Section 302 of the IPC to a lesser offence.

12] In the result, we pass the following order :-

ORDER

Criminal Appeal No.219 of 2013 is dismissed.

[SARANG V. KOTWAL, J.]

[B. R. GAVAI, J.]