

Sequeira

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

CRIMINAL APPEAL NO. 350 OF 2012

Baban @ Javed Noormahamad Munde

Age : 45 yrs. Occ. Agriculture,

R/at: Islampur, Tal. Walwa,

Dist: Sangli

(At present lodged in Kolhapur

Central Jail, Kalamba.)

... Appellant /

Ori.Accused

Vs.

The State of Maharashtra

(At the instance of Islampur

Police Station, Tal: Walwa,

Dist: Sangli)

... Respondent

Mr.Ragini Ahuja a/w Dashrath Gaikwad i/b Dr.Yug
Mohit Chaudhry, for the Appellant.

Ms.S.V.Sonawane, APP for the Respondent/State.

**CORAM : S.S.SHINDE &
A.S.GADKARI, JJ.**

DATE : 30TH OCTOBER 2018

JUDGMENT [PER S.S. SHINDE, J.] :

This Appeal is directed against the Judgment and order dated 8th December, 2011, passed by the Additional Sessions Judge, Islampur, Dist. Sangli in Sessions Case No.53 of 2009, thereby convicting the Appellant/Accused – Baban @ Javed Noormahamad Munde for the offence punishable under Section 302 of the Indian Penal Code [for short 'I.P. Code'] and sentencing him to suffer life imprisonment and to pay fine of Rs.10,000/- in default of payment of fine amount to suffer Rigorous Imprisonment for the period of one year. The trial Court also convicted the Appellant/Accused – Baban @ Javed Noormahamad Munde for the offence punishable under Section 506 of the I.P. Code, no separate punishment is awarded for the said offence. Hence this Appeal is filed by the Appellant challenging the

conviction and sentence.

2. The prosecution case, in brief, is as under:

A) The complainant Jaibun Razzak Munde along with her husband Razzak, brother-in-law deceased Babalal Munde and his wife Tanubai and her son Hussain, his wife Umera with their three children were jointly residing at Munde Wasti situated in the field Survey No.445/1 near Laxmi Temple within jurisdiction of Islampur, Taluka-Walwa, District-Sangli. Accused is her nephew (Son of her brother-in-law Noormohammad), who resides separately nearby at another house situated in Islampur town. The Complainant Jaibun and her husband Razaak are issueless and therefore, the Accused was insisting them to transfer agricultural land standing in their name to him and on that account, he used to harass and quarrel with her and her husband and with deceased Babalal on the night before the date of

incident. The Accused on the same ground had given abuses and threats to them by standing on Sangli road.

3. On 23rd September 2009 at about 9.00 a.m while the complainant Jaibun and her nephew Jamir Musekhan Munde (son of her sister) and deceased Babalal were taking out seeds of maize corn in the courtyard of their house near cattle shed, at that time, the Accused approached them from house of his brother Allauddin Munde situated near their field. The Accused took tobacco from Babalal and put into mouth. Thereafter, the Accused raised quarrel with Babalal by asking him when they would transfer agricultural land standing in his name (in the name of Razaak) and further told that he wants that land. Hence, they (Babalal and Jaibun) tried to convince him. However, the Accused did not hear them and fetched wooden baton patti (wooden log) from heap of scrap behind Laxmi temple and gave blow with force on the head of Babalal by saying that now he will not be kept alive. (Tula Aata Jivant thevat Nahi) resulting

into Babalal sustaining bleeding injury on his head and he fell on the ground. Even then the Accused gave 2-3 blows on shoulder of Babalal with same baton patti. Hence, Jaibun and her nephew Jamir got confused due to such incident which occurred suddenly and unexpectedly. When they tried to interfere by making shouts, that time the Accused came to them by shouting and giving threats that now you will not be let free, if they come forward they will be killed. Hence Jaibun and Jamir started to run from the spot. However, the Accused started to chase them with baton patti. Therefore, Jaibun and Jamir went on Sangli road and started shouting loudly. Therefore, persons present in nearby field rushed to them. On seeing the field owners, the Accused ran away through fields along with baton patti. Thereafter, Hussain son of Babalal was called by sending Jamir. Thereafter all three of them Jaibun, Jamir and Hussain went to Islampur police station and narrated the incident. The police gave *yadi* for medical treatment of Babalal. They came to the spot along with that *yadi*

and found that Babalal was dead. Therefore, again Jaibun went to Islampur police station and filed complaint against the Accused. Accordingly at Islampur police station offences punishable under sections 302 and 506 of the Indian Penal Code came to be registered against the Accused.

4. API-Chendake probed the present Crime. He recorded panchanama of place of offence and collected ordinary soil and soil mixed with blood found on the spot. API-Chendake prepared inquest panchanama of dead body of Babalal. Thereafter, API arrested the Accused under panchanama. API also collected the panchanama of seizure of the clothes of deceased Babalal prepared by police station officer, Police Head Constable - Chandane. Further probe was handed over to PI-Salokhe. As per the directions of PI-Salokhe, the API-Chendake seized clothes of the Accused under panchanama. PI-Salokhe recorded statements of witnesses and collected panchanamas prepared by API-Chendake and Head Constable-Chandane. Thereafter he recovered the baton patti as per the

disclosure statement of the Accused. He sent seized clothes of deceased Babalal, of the Accused, the baton patti and blood samples for Chemical Analysis along with Requisition letter through carrier Police Head Constable-Dabole and collected Reports from Chemical Analysis.

5. After the investigation was over charge-sheet was filed. The learned Judicial Magistrate (First Class) found the case exclusively triable by the Sessions Court and committed the case to Session Court, Islampur. The then Additional Session Judge, Islampur framed the charge against the Accused vide Exhibit 7, for the offences punishable under section 302 and 506 of the Indian Penal Code. The Accused did not plead guilty and claimed to be tried. Accordingly after framing the charge the Accused was tried and by the impugned Judgment and Order the trial Court convicted Accused (i.e Appellant herein) for the offence punishable under section 302 of the Indian Penal Code and he was sentenced to suffer Life Imprisonment and to pay a fine of Rs.10,000/- in

default of payment of fine amount he was directed to suffer Rigorous Imprisonment for the period of one year. Though the Accused Baban @ Javed Noormahamad is held guilty for an offence punishable under Section 506 of Indian Penal Code no separate punishment is awarded for the said offence. Hence, this Appeal by the convicted Accused.

6. In order to prove that death of Babalal Aba Munde was homicidal, the prosecution examined Dr.Kranti Dilip Sawant [PW-8], medical officer working at Rural Hospital Chinchani. She deposed that on 23 September 2009, she was attached to Sub-district Government hospital, Islampur. On that date, police of Islampur police station had sent dead body of Babalal Aba Munde for Post Mortem with Yadi [Exhibit 37]. Accordingly she performed Post Mortem. On external examination, she found that it was male body. It was covered with white coloured Bandi, Dhoti and Lining underwear. Clothes were stained with blood. Condition of body was well nourished.

Rigor Mortis was present over Lower Limb. There was no signs of decomposition. Eyes were closed and tongue was inside. Blood found in mouth and nostrils. Marks of blood were present over the body. No genital injury found on the body. No purging. Position of limbs was that the limbs were straight and hands were closed.

7. On examination, Dr.Kranti [PW-8] found following surface injuries :

(1) CLW over right cheek verticle 5 cms. X 2 cms. fracture maxilla seen. Blood clots seen.

(2) CLW over occipital region 7 cm. X 2 cm. Vertical. Blood clots seen.

8. Dr.Kranti [PW-8] also found fracture of occipital and right maxillary bone and the following internal injuries as under -

(1) CLW over occipital region 7 cms x 2cms. Blood clot seen.

(2) Verticle fracture of occipital bone

irregular margin seen 5 cms. Impacted bones.

(3) Extra and Intradural haemotoma seen. Blood clots seen. Dura torn.

Dr.Kranti [PW.8] found blood in dumen of larynx, trachea and bronchi. Both lungs were congested. She opined that, the cause of death was Neurogenic shock due to head injury and such injury can be caused by hard and blunt object, like wooden shaft [Article No.8]. Upon careful perusal of the evidence of Dr.Kranti Dilip Sawant [PW-8], it is crystal clear that Babalal Aba Munde died homicidal death. The defence did not elicit anything from her cross-examination.

9. There is a direct evidence in the present case. The prosecution examined Jamir Musekhan Munde [PW-5] as eye-witness. Jamir [PW-5] deposed that he is residing at New Takari Naka, Islampur. He is doing the work of Centering. His paternal aunt Jaibun along with her husband Razaak, brother-in-law Babalal, his wife -Tanubai, his son Hussen and wife

of Hussen, all are residing jointly at Islampur near School No.1. Baban alias Javen Munde is the nephew of Jaibun. Baban used to quarrel with Babalal, Jaibun and Razzak for agricultural land.

10. On 23 September 2009, at about 8.00 a.m. Jamir [PW-5] had been to the farm house of his paternal aunt Jaibun. At that time in the house Jaibun, Babalal (deceased) and his son Husen were present. At that time, Accused was stopped at the field of his brother Allauddin. Jamir [PW-5] asked his maternal aunt Jaibun to give maize corn and accordingly, she brought the same near to the cattle shed and Jamir [PW-5] along with his maternal aunt Jaibun and Babalal(deceased) were removing the seeds. At that time, Hussen left from there carrying the milk. At about 9-00 a.m Accused came to the house of Jaibun and demanded the tobacco from Babalal (deceased). Then he started quarreling with Babalal (deceased) and Jaibun, thereby asking, when Babulal is transferring the land of Razzak Munde in his

favour. Then Babalal (deceased) and Jaibun tried to convince him (Accused), but the Accused did not listen to them. Then the Accused went to the back side of Laxmi Mandir and brought the baton patti. Then Accused said to Babalal (deceased) that he will not keep them alive. Then suddenly Accused assaulted Babalal (deceased) by baton patti on his head. Thereby Babalal (deceased) sustained the bleeding injury and fell down. After falling down the Accused also assaulted on the shoulder and on the jaws by baton patti. Then Jamir [PW-5] and Jaibun tried to separate them. At that time, the Accused also said 'mudd-da paadeen' and also came to them. Therefore, Jamir [PW-5] himself and Jaibun made a shouting and came on Sangli Road running. While they were coming, they saw Sudam Kisan Kshirsagar and his uncle Shivaji. At that time, Jaibun asked Jamir [PW-5] to call Husen, son of Babalal (deceased). At the same time, the Accused ran away from there along with baton patti from the kaccha road.

At that time, by his motor cycle Jamir [PW-

5] was coming to Islampur to call Husen. While coming Husen met Jamir [PW-5] at Walwa phata, as his motor cycle was having fault. Jamir [PW-5] informed to Husen that Javed Munde had assaulted his father. Then Jamir [PW-5] brought Husen on his motor cycle. While coming Jamir [PW-5] saw on the way Jaibun was running. She informed them not to go to the house because Javed may assault them also and they first give the report to the police station.

Then they all three Jaibun, Husen and Jamir [PW-5] came to Islampur police station. Then Jaibun and Jamir[PW-5] narrated the incident to the police. Then police gave one chit and asked to take Babalal (deceased) to first hospital. Thereafter they all three came back to their farm house. When they came to the house near to Babalal (deceased), Sudam Kshirsagar, Kisan Kshirsagar and Shivaji Kshirsagar were staying there. They informed to them that police had given the chit for taking Babalal (deceased) to the hospital. Then they went near to Babalal (deceased). They saw from the head injury,

much blood was flown and Babalal died on the spot. Thereafter, Jaibun and Husen went to the police station to give the report. Then after waiting for about 15 to 20 minutes, Jamir [PW-5] went to call the people from his house. It appears that, Baton patti by which the Accused assaulted, Babulal was about 3 ft. in length, 2 inch thick and 3 inch width. Jamir [PW-5] identified baton patti (Article No.8) which was in the sealed packet from C.A. on being shown to him before the Court. Though Jamir [PW-5] was cross-examined at length, nothing fruitful has been elicited by the defence from his cross-examination.

11. The prosecution examined another eye-witness Jaibun Razzak Munde [PW-7]. Jaibun [PW-7] deposed that at the time of the incident, she along with her husband, her brother-in-law Babalal (deceased) and his wife and children were residing jointly. They were residing on Islampur Sangli Road near Laxmi Temple, Munde Wasti, at Islampur. Jaibun

Munde [PW-7] deposed that Accused is her nephew (son of her brother-in-law Noormohammad). Jaibun [PW-7] stated in her evidence that she has another house in Islampur City and Accused resides in front of that house. Jaibun [PW-7] further deposed that as she is issueless, the Accused used to demand agricultural land to give to his share for transferring in his name and on that account, he used to raise quarrel with her, her husband Razzak and her brother-in-law Babalal (deceased). Jaibun [PW-7] further deposed that a day before the incident, the Accused had come to their locality in front of her house at about 10-30 to 11-00 p.m. and had given abuses and threats to them on account of agricultural land. There is Sangli road in front of her house and Accused had given abuses and threats by standing on that road.

12. It is further deposed by Jaibun [PW-7] that the incident took place on 23rd September 2009. On that date at about 9-00 a.m. Jaibun [PW-7], along with her brother-in-law Babalal and nephew Jamir [PW-5] were opening leaves of maize-crop near cattle shed

in the courtyard of her house at Munde Wasti. At that time, the Accused arrived at that spot from house of his brother Allauddin. The Accused took tobacco from Babalal (deceased) and put into his mouth. Thereafter, the Accused raised quarrel with her and Babalal (deceased) on account of agricultural land in their name. The Accused uttered words that 'I want that land and when will the land be transferred in his name', hence, they tried to convince the Accused. However, the Accused did not remain silent, but fetched one wooden baton shaft from behind Laxmi Temple. The Accused told to Babalal (deceased) that 'now I'm not keeping you alive' and immediately gave blow of wooden shaft on head of Babalal (deceased) from behind. Babalal(deceased) sustained bleeding injury on his back head and therefore, he fell down. Therefore, she -Jaibun [PW-7] along with Jamir [PW-5] proceeded towards Babalal (deceased) in order to rescue him. However at that time, the Accused gave threats of killing to Jaibun [PW-7] and Jamir [PW-5]. Accused

told that "Now, not letting you free, if you come forward, then will drop you dead". The Accused started to chase Jaibun [PW-7], along with Jamir [PW-5] in order to assault with wooden shaft. The witness Jaibun[PW-7], along with Jamir [PW-5] rushed to Sangli Road and made shouts. Therefore, people in the nearby fields rushed to the spot. On looking those people, the Accused went away with wooden shaft to field situated towards East of her house. Thereafter, she called her nephew Hussain through her another nephew Jamir [PW-5]. Thereafter Jaibun [PW-7], along with Hussain and Jamir[PW-5], went to Islampur Police Station. Jaibun [PW-7] further deposed that she told to police that Accused assaulted Babalal (deceased) and therefore, Babalal became unconscious. Police told her - Jaibun [PW-7] to take Babalal (deceased) first for medical treatment. Police gave her yadi for taking Babalal (deceased) for medical treatment. Jaibun [PW-7] along with Hussain and Jamir [PW-5] came to the house of Jaibun[PW-7] along with Police Yadi. They found

that Babalal was dead. Jaibun[PW-7] along with Hussain immediately went to Islampur Police station and filed complaint against the Accused. Nothing fruitful has been elicited from her lengthy cross-examination.

13. Upon conjoint reading of evidence of aforesaid two eye-witnesses namely Jamir Musekhan Munder [PW-5] and Jaibun Razzak Munder, it is crystal clear that the incident had happened at about 9.00 a.m on 23 September 2009. Both the eye-witnesses have categorically deposed about the manner in which incident had taken place. The evidence of both the eye-witnesses corroborates each other.

14. The prosecution has convincingly proved that the Appellant has assaulted Babalal Munde (deceased) and as a result he died.

15. The prosecution examined Husen Fakruddin Shaikh[PW-1], panch witness for seizure of clothes of

the Accused, to prove the seizure panchanama (Exhibit-12). The Prosecution also examined Namdeo Ananda Shendage [PW-6] and Hanmant Nana Jadhav [PW-9], panch witnesses for seizure of clothes of Babalal Aba Munde (deceased) to prove the seizure panchanama (Exhibit-28). Mr.Hanmant Jadhav [PW-9] is also examined by the prosecution as he is also panch under Section 27 of the Evidence Act, pursuant to the memorandum statement of Accused (Exhibit 44) upon which Accused led Hanmant Jadhav [PW-9], the co-panch Sanjay Kute, Police Inspector, and other three Policemen by Police Jeep upto Laxmi Devi temple on Islampur-Sangli Road towards half constructed shed of Mr.Gavade and took out the baton patti (Article No.8) lying on small grass in that shed and produced it before the panchas and the police. Upon recovery of the wooden baton accordingly police prepared the panchanama [Exhibit 45]. The prosecution examined Krishna Balaso Shriram [PW-2] and Sudam Kisan Kshirsagar [PW-4] as panch witnesses to prove the spot panchanama. Prosecution has also examined the

Investigating Officers Sidram Chandrasen Chendake – API [PW.11] and Ravindra Madhavrao Salokhe and other police officers. Prosecution has duly proved seizure panchanama, spot panchanama and also the recovery panchanama.

16. The prosecution has convincingly proved that Babalal Munde died homicidal death and the Appellant is responsible for death of Babalal Munde.

17. It appears from the scrutiny of the entire evidence brought on record by the prosecution that the accused did not come armed with weapon at the spot of the incident. There was no premeditation as such. It appears from the evidence of the eye-witnesses that Accused arrived at the spot of incident at 9.00 a.m. on 23 September 2009 came to the house of Jaibun [PW-7] and demanded the tobacco from Babalal (deceased). Then he asked for transfer of land in his name from Babalal (deceased). It further appears that Babalal (deceased) and Jaibun[PW-7] tried to convince him that the Accused

got angry and did not listen to them. Then he went to the backside of Laxmi Mandir and brought the baton patti. Then Accused assaulted Babalal (deceased) by said baton patti on his head and then again gave another blow on his head. It is true that he also assaulted on shoulder of Babalal (deceased) and as a result of assault by the Accused Babalal (deceased) died. However, as already observed there was no premeditation or Accused came armed with weapon so as to kill Babalal (deceased). There was quarrel and in heat of passion he assaulted Babalal (deceased).

18. Considering the evidence on record we are of the view that, Exception 4 to Section 300 applies to the facts of the present case and the appropriate conviction would be under Section 304 Part II of the Indian Penal Code. Hence, the conviction of the Appellant under Section 302 of the Indian Penal Code is set aside and instead the Appellant is convicted under Section 304 Part II of the Indian Penal Code and the Appellant is sentenced to suffer rigorous imprisonment for ten years and the fine amount

imposed upon the Appellant and in default of payment of fine sentenced is maintained.

2. The Appellant is entitled for set off under Section 428 of the Code of Criminal Procedure.

3. Appeal is partly allowed in the aforesaid terms.

4. All the concerned to act on a copy of this Order duly authenticated by the registry of this Court.

(A.S.GADKARI,J.)

(S. S. SHINDE,J.)