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

CRIMINAL APPEAL NO. 548 OF 2011

Mahesh @ Mahendra Mahadev Bambargekar

Age 21 years, Occu.- Agriculturist,

R/o. Kudnur, Tal. - Chandgad,

Dist. - Kolhapur.

(At present lodged in District Prison,
Kalamba, Kolhapur).

... Appellant.
(Orig. Accused)

V/s.

The State of Maharashtra.

... Respondent.

Mr. Anand Patil for the Appellant.

Ms. Sharmila Kaushik, APP for the Respondent – State.

***CORAM : S.S. Shinde and
A.S. Gadkari, JJ.***

DATE : 17th October 2018.

Judgment (Per S.S. Shinde, J.) :-

This Appeal is directed against the Judgment and Order dated 05/02/2011, passed by the learned Additional Sessions Judge, Gadhinglaj, District - Kolhapur in Sessions Case No. 2 of 2010, thereby convicting the Appellant/Accused – Mahesh

@ Mahendra Mahadev Bambargekar for the offence punishable under Section 302 r/w. Section 34 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.2,000/-, in default of payment of fine to suffer simple imprisonment for one year. Hence, this Appeal is filed by the Appellant challenging the conviction and sentence.

2. The prosecution case, in short, is as under :-

A) One Mahesh @ Mahendra Mahadev Bambargekar (Accused No.1) had two wives. One Ravindra (for sake of brevity hereinafter would be referred as deceased) was begotten from his first wife. Mahesh (Accused No.1) was begotten from second wife. Said deceased and accused were residing under same roof but in different rooms. The deceased was residing in front room of the said house. It is the case of the prosecution that accused No.2 had borrowed loan from Laxmi Credit Co-operative Society, Kudnur. The deceased was serving in the said Co-operative Society but his salary was attached for repayment of the loan borrowed by the Accused No.2. There used to be dispute between

the deceased and accused persons on the count of repayment of said loan amount. The deceased was not getting his salary because of the loan borrowed by Accused No.2. The accused had asked him to repay the loan amount otherwise threatened the deceased to kill him.

B) On 9th June 2009 deceased and his wife Bhagyashree had gone to the Village Mhalewadi for celebrating the festival of Bendur. On 11th June 2009, Ravindra alone returned to his home in the morning. Thereafter, at about 11.00 hours in the morning, one Subhash Bambargekar and Pappu Bambargekar went to Mhalewadi and informed Bhagyashree that Ravindra was murdered by the accused. Therefore, she returned to her home. She found that the dead body of Ravindra was lying in the pool of blood in the first room of the house. A crowd was gathered in front of the house. The neighbours Narayan Kokitkar, Tamanna Kori and Umesh Dapanwar informed Bhagyashree that the accused murdered Ravindra on the account of repayment of loan amount. The Accused No.1 had stabbed deceased Ravindra. Therefore, Bhagyashree lodged the First Information Report.

C) Pursuant to registration of the First Information Report, the Investigating Officer conducted the thorough investigation and thereafter, filed the charge-sheet. In all three accused namely Mahesh, Mahadev and Smt. Shanta, wife of Mahesh were tried before the Sessions Court at Gadhinglaj. The said Court acquitted Mahadev and Smt. Shanta Accused Nos. 2 and 3 respectively, and convicted Mahesh (Accused No.1) for the offence punishable under Section 302 of the Indian Penal Code and he was sentenced to undergo imprisonment for life and shall also pay a fine of Rs.2,000/- and in default, to suffer simple imprisonment for one year. Since the date of arrest that is 11th June 2009 the Accused No.1 is undergoing the sentence, being aggrieved by the impugned Judgment and Order, this Appeal is filed by the Appellant Mahesh (Accused No.1).

3. In order to prove the prosecution case, the prosecution examined as many as 18 witnesses. In order to prove the spot of the incident, the prosecution examined Ajit Govindrao Pawar (PW-6). Upon perusal of the evidence of Ajit Govindrao Pawar (PW-6), he stated that the dead body of Ravindra was lying in

front of the room of the house which was in possession of the accused. The spot of the incident is not in dispute. It appears that the accused persons and deceased Ravindra made internal arrangement of residing in separate rooms and accordingly, Ravindra was residing in front room of the same house wherein the accused were residing.

4. In order to prove whether the death was homicidal, the prosecution examined Medical Officer Dr. Dipak Shankar Patil (PW-10). He deposed that he is practicing as Doctor at Village Kudnur since last 15 years. In his deposition he stated that on 11th June 2009 between 10.30 a.m. to 11.00 a.m. Ravindra Bambargekar was brought to him. There was bleeding from the left side of his chest. He was lifted by four persons. He examined his pulse and thereafter, he advised those persons to carry him to Kowad.

5. The prosecution examined the Medical Officer Dr. Hari-Vitthal Maruti Patil (PW-13), who conducted post-mortem of deceased Ravindra. He deposed before the Court that since last

11 years he is serving as Medical Officer and posted in the month of January 2005 at Kowad. In his deposition he stated that, on 11th June 2009 dead body of Ravindra was brought to his hospital at about 4.15 p.m. for postmortem examination. He examined Ravindra and found following injuries on his body :-

(1) Incise stab wound over left side of chest in anterior auxiliary line at 6th intercostal space. It was 3 cms x 1.5 cms and deep. Horizontally it was touching 6th rib.

(2) Abrasion below right eye, there was clotted blood.

(3) Abrasion at left eye brow lateral part. Clotted blood was present. After reversion I found the stab wound reaching the thorax in 6th intercostal space in anterior auxiliary line. It was 3.5 cm horizontal and 2 cms vertical. It was cutting lower edge of 6th rib to the left side.

(4) Left sided pleural space was open in 6th intercostal space and it was filled with clots of blood.

6. He stated that the cause of death was acute cardiac failure due to rupture of left ventricle at apex. Accordingly, he prepared the postmortem note. It appears that during the examination-in-chief, knife (Article 1) was shown to him and he opined that the injury found on the deceased person was possible by the said knife. In his cross-examination he stated that the injury on the deceased is most grievous injury. There was no possibility of any more grievous injury at the said place. He denied the suggestion that the injury no.1 mentioned hereinabove is possible due to self infliction. He denied the suggestion that the injury no.1 was not the stab wound. Therefore, the prosecution has successfully proved that the death of Ravindra was homicidal.

7. In order to prove the motive of commission of offence, the prosecution examined Bhagyashree Ravindra Bambargekar (PW-1) that is the informant, and Balkrishna Kedari Nagardalekar (PW-12). Bhagyashree (PW-1), in her deposition before the Court stated that she was married with Ravindra. Eight years prior to the date of incident, out of said wed lock she delivered a son and a daughter. They were residing in joint family with her father-in-

law, mother-in-law and the brother-in-law. Her father-in-law that is Accused No.2 had borrowed loan from Laxmi Credit Co-operative Society, Kudnur. Her husband Ravindra was also serving in the said Society. The salary of Ravindra was being deducted towards repayment of the loan borrowed by the father-in-law, there used to be dispute between her husband that is Ravindra and father-in-law regarding repayment of the loan amount. In order to resolve said dispute, there was meeting between her husband and in-laws but in-laws insisted for repayment of loan amount by Ravindra. The couple started residing in front room of the house. She further deposed that the accused threatened Ravindra that in case if he fails to repay the loan amount, they will kill him. In order to get over the financial crunch faced by the family, Bhagyashree and Ravindra started shop of selling betel leaf for meeting day today expenses.

. She further deposed that on 9th June 2009 she had gone to her parents at Village Mhalewadi on the occasion of Bendur festival. One Subhash Bamargekar and Pappu Bamargekar came to her at about 11.30 a.m. at Mhalewadi and

stated that her husband was murdered by Accused No.1 Mahesh. Therefore, she returned to her home. She saw that, people were gathered at her house. She found blood stains on the stairs of her house and in the room there was pool of blood. The dead body of Ravindra was lying there. She came to know that Mahesh had stabbed her husband with a knife. The persons Narayan Kokitlar, Tamanna Kori and Umesh Happannawar, who are residing nearby her house stated that Ravindra was murdered by Accused No.1. She has specifically deposed that her husband was murdered out of the dispute regarding the repayment of the loan amount. She further deposed that her father-in-law Mahadev has expired.

8. During her cross-examination nothing useful to the defence has been elicited. On the contrary she has reiterated the statements made in the examination-in-chief. She denied the suggestion that there was no dispute between her husband and accused persons regarding repayment of loan amount.

9. The prosecution also examined Balkrishna Kedari Nagardalekar (PW-12) on the point of motive. It is deposed by

him that since the year 2000 he is serving as Manager of Laxmi Co-operative Credit Society, Kudnur. The said Society carry the business of accepting deposits from public and advancing loan to the needy persons. He know Ravindra Bambargekar. He was serving as Pigmy Agent-cum-Peon in the said Society. His father Mahadev also served with the Society. In the year 2002 Mahadev, Shanta Mahadev Bambargekar, and Ravindra Mahadev Bambargekar had borrowed loan of Rs.30,000/- each, from the Society. All three loan accounts were in arrears and there were some recovery from the salary of Ravindra. Whenever he used to demand the loan amount to Shantabai and Mahadev, they used to assure the repayment and used to ask for further time to make the said repayment. He further deposed that after death of Ravindra, the Investigating Officer asked for details of the loan amount borrowed by the accused and Ravindra and accordingly, the information was given by him. Therefore, the prosecution, by examining Bhagyashree (PW-1) and Balkrishna Kedari Nagardalekar (PW-12) has brought on record the motive for commission of offence of Ravindra by the Appellant.

10. The prosecution examined Narayan Genappa Kokitkar (PW-2), who deposed that Mahahev Bambargekar (Accused No.2) and he himself reside in the same lane at village Kudnur. Mahadev has married twice. Ravindra (deceased) was the son delivered from first wife. Mahesh (Accused no.1) is the son delivered from second wife. The accused and Ravindra used to reside separately but in one house. Mahadev had borrowed loan from Laxmi Credit Co-operative Society. Ravindra was also serving there. There was quarrel between Ravindra and Mahadev on the count of said loan amount. It is further deposed by him that prior to two years, when sowing season was in progress, after 9 O'clock in the morning, he went to the house of the accused as he heard commotion. He saw Ravindra was lying on the ground. He found him dead. The Accused No.1 was standing near him and he was possessing a knife. He further stated that when he tried to lift Ravindra, his hands got stained with blood. He further stated that other two accused Mahadev and Shantabai were also present. However, during his cross-examination he stated that he did not seen the accused persons at the spot of the incident. However, his

evidence that he heard commotion from the house of the accused and Ravindra was lying on the ground in dead condition and other people gathered there has been proved by the prosecution through PW-2.

11. Anand Shivputra Kori (PW-3) has also deposed that the incident occurred on 11th June 2009. The time was about 10.15 a.m. to 10.30 a.m. when he was studying at home. He heard commotion from the house of the accused. He found that, a crowd was gathered in front of house of accused. He went to the said spot. He found that Ravindra was lying in pool of blood in the outer part of his house. As the people asked to lift Ravindra to reach him to the hospital, he helped other person to lift Ravindra. However, he stated that he did not see the accused Mahesh at the spot. It is true that the presence of the accused has been denied by the witness at the spot of the incident. However, the prosecution is successful to prove through Anand Kori (PW-3) that the spot of the incident was house of the accused and he heard commotion from the said house and people gathered at the spot of incident.

12. The prosecution examined Umesh Nigappa Hampannawar (PW-4). He stated that the house of Mahesh (Accused No.1) and himself are in the same lane. Mahesh and Ravindra (deceased) are step brothers. The mother of Ravindra has expired. Mahadev had borrowed loan from Laxmi Credit Co-operative Society. Ravindra was serving in the said Society. There used to be the dispute between Mahadev and Ravindra on the count of repayment of the said amount. The distance between his house and the house of Mahesh (Accused No.1) is about 20 ft. He further deposed that he did not go to the spot of the incident. However, the prosecution is successful in bringing on record the motive behind the commission of offence. It is true that during his cross-examination, he stated that the dispute between Ravindra and his father Mahadev was resolved. Nevertheless there was dispute between Mahadev and Ravindra on the count of repayment of loan amount, which has been brought on record by the prosecution by examining Umesh Hampannawar (PW-4).

13. The prosecution examined Shivnand Mahalinga Mukannawar (PW-5), who deposed that his shop is situated

opposite to the house of accused. He knew the accused and deceased Ravindra. Ravindra and accused were residing separately. When the incident occurred on 11th June 2009, he heard commotion but he stayed at his shop. It appears that thereafter, he did not support the prosecution case. Therefore, he was declared hostile and was cross-examined by the learned APP. During his cross-examination by the APP, he stated that, it is true that he stated to the police that, after opening the shop at about 10.30 a.m., he heard shouts from the house of accused and that, Ravindra Bambargekar was lying in bleeding condition at the house of the accused and Mahesh was standing there having knife in his hand and Mahadev was shouting loudly there. It further appears that he was cross-examined by the Advocate for the Accused and further he denied that he visited the spot of the incident. He also denied the presence of the Appellant at the spot of the incident. However, his evidence to the extent that he heard the commotion from the house of accused at about 11.00 a.m. is brought on record by the prosecution through Shivnand Mukannawar (PW-5). As already observed, the shop is situated

opposite the house of the accused. He has also stated that the incident occurred on 11th June 2009.

14. The prosecution examined Ajit Govindrao Pawar (PW-6). In his examination-in-chief, he deposed that on 11th June 2009 he had gone to the house of Ravindra. One Babu Wadar was also with him. The police asked him to act as panch. The wife of Ravindra showed the spot. It was the house of Mahadev Bambargekar situated in middle lane of the village. He further deposed that dead body of Ravindra was lying in the pool of blood. There was pair of chappal and another pair of slipper and a stick. All these articles were soaked with blood. The police seized those articles and then prepared panchnama. He identified the articles which were seized during the panchnama on 11th June 2009. He denied the suggestion during his cross-examination that he has merely signed the panchnama as dictated by the police. Therefore, the prosecution is successful in proving the spot of the incident through this witness and also the seizure of articles from the spot.

15. The important witness Mahadeo Pundalik Gurav (PW-7) in his evidence before the Court deposed that on 13th June 2009 he was called by the Police to act as a panch. He further deposed that Mahesh Mahadev Bambargekar (Accused No.1) made a statement to produce the knife used in crime. Pursuant to his memorandum statement the Police squad accompanying him proceeded to village Kudnur by police jeep. After reaching the village, the accused got down from the said jeep and entered in his house. The police personnel and Mahadev Gurav (PW-7) were behind accused Mahesh. After leaving first room in the house of accused, there is one stair case in the second room which is wooden stair-case. They went on the first floor. There was firewood stored in gunny bags. The accused climbed over the said gunny bag and went to the stilt. Mahadeo Gurav (PW-7) also climbed there. From the said place the Accused No.1 Mahesh took out the knife concealed under beneath of the roof. It was roof of tiles and knife was concealed under the tiles with the support of the log. The knife was stained with blood. The Police then prepared panchnama and took the knife in their custody. It was

sealed and seized by the Police. The panchnama of all these facts was prepared by the Police and same was read over to Mahadeo Gurav (PW-7) and then he signed the same. Therefore, the prosecution has proved the panchnama of recovery of blood stained knife pursuant to memorandum statement made by the Accused No.1 – Mahesh that the knife which was used in the commission of offence has been concealed by him in the roof of house of the accused.

. During his cross-examination he denied the suggestion that as dictated by the Police he has signed the panchnama without actually visiting the house of the accused.

16. The prosecution further examined Shivaji Appa Tejam (PW-8). He acted as panch. On seizure of clothes of deceased, it appears that on 11th June 2009 i.e., on the date of the incident, the clothes i.e. one shirt of white and red colour, one pant and one black underwear were seized. The said clothes were sealed in presence of Shivaji Tejam (PW-8). He deposed that the said clothes were stained with blood. Thereafter, the panchnama was

prepared and the said panchnama was signed by him. The other panchas also signed the said panchnama. During his cross-examination nothing useful to the defence has been elicited.

17. The prosecution further examined Ashok Veeranna Gidnawar (PW-9), who acted as a panch to the seizure of clothes of accused Mahesh. He stated that the said clothes were stained with blood. He has in detail deposed about seizure of the clothes and thereafter, panchnama was prepared and same panchnama was signed by him.

18. The prosecution examined Nandkumar Narayan Belgaonkar (PW-11). He deposed that on 11th June 2009, Mahesh (Accused No.1) had been to his shop between 9.30 a.m. to 10.30 a.m. He asked him to show knives as he wanted to purchase the knife. He showed the knives of 2 to 3 companies. He chose a long knife. He paid him Rs.30/- and purchased the knife. In his cross-examination he denied the suggestion that the accused Mahesh has not purchased the knife from his shop on 11th June 2009. The prosecution has successfully brought on record the cogent

evidence of purchasing knife by the accused Mahesh from Nandkumar Belgaonkar (PW-11) within the proximate time of the incident.

19. The prosecution examined Balasaheb Bharat Jadhav (PW-14), who was serving as Police Constable from 2004 to October 2009 at Chandgad Police Station. He was asked to carry the samples collected alongwith the articles by the Police Inspector Shri Dhage to the Chemical Analyzer at Pune and accordingly, said seized articles and samples collected during the course of investigation were sent to the Chemical Analyzer through Balasaheb Jadhav (PW-14) by the concerned Investigating Officer.

20. The prosecution has also examined Tukaram Santu Jadhav (PW-15), to register the crime and entrusted the investigation to the Police Inspector Shri Dhage. The prosecution examined Pralhad Baburao Sardesai (PW-16), who received a phone call at about 10.45 a.m. on 11th June 2009 from village Kudnur, that there was fighting going on in the village Kudnur and pursuant to receiving of such information, he alongwith other

police personnel, went to village Kudnur.

21. The prosecution examined Ramchandra Ishwar Dhage (PW-17), who was the Investigating Officer of the crime which was registered pursuant to complaint lodged by Bhagyashree (PW-1) on 11th June 2009. In his deposition he has categorically stated the manner in which investigation was done by him.

22. It appears that the report from Chemical Analyzer in respect of sample and seizure articles which were seized during the course of investigation was received before the trial was commenced.

23. We have discussed the evidence of all the witnesses who were examined by the prosecution. The prosecution though did not prove convincingly the presence of the accused at the relevant time after the incident at the spot, nevertheless the following incriminating circumstances are brought on record by the prosecution and same have been proved by examining the prosecution witnesses. The first circumstance which has been proved by the prosecution through Bhagyashree (PW-1), Narayan

Kokitkar (PW-2) and Anand Kori (PW-3) that the dead body of Ravindra was lying in front room of the house of the accused. In the said house the accused persons and deceased Ravindra were residing. It was common house. However, Ravindra was residing in separate room as family arrangement.

. It is also proved by the prosecution through the evidence of Narayan Kokitkar (PW-2), Anand Kori (PW-3), Umesh Hampannawar (PW-4), Shivanand Mukannawar (PW-5) and Ajit Pawar (PW-6) that, at the relevant time of incident there was commotion from the house of the accused. Thirdly, the incident had taken place in the morning hours in the house of accused and therefore, the circumstances and facts which laid to happening of such incident of death of Ravindra were within the special knowledge of the accused, and hence accused was obliged to explain, how the dead body of Ravindra was lying in the house of accused. However, the accused failed to discharge the onus. Fourthly, the important and vital circumstance which directly links Mahesh (Accused No.1) is, blood stains found on the pant of Mahesh and he was having knowledge regarding the place where

the knife was concealed. It is revealed from the report (Exhibits 66 to 68) received from Chemical Analyzer that blood group of all accused persons is 'A'. While the blood group of deceased Ravindra was 'AB'. It is further revealed that the pant of accused Mahesh was having blood stains of blood group 'AB'. There is no explanation brought on record by the accused, as to how the blood (stains) group 'AB' appeared on his pant.

. The incident occurred during the morning hours as stated by the prosecution witnesses, and First Information Report was immediately lodged on the same day. There was small time gap between the happening of the incident and at the same time hearing of the commotion by the prosecution witnesses from the house of the accused, and lodging of the First Information Report. Therefore, the possibility of the concoction or fabrication of real facts by the prosecution witnesses has been completely ruled out. It further appears that, on the date of incident itself the accused Mahesh was apprehended and immediately seizure of clothes of the accused as well as the deceased and also other incriminating material was collected by the Investigating Officer during the

course of the investigation. The fact that Mahesh (Accused No.1) purchased the knife from Nandkumar Belgaonkar (PW-11) within the proximate date and time of the incident clearly shows that, Accused No.1 Mahesh @ Mahendra planned the murder of Ravindra and then killed him. There was pre-meditation and pursuant to purchase of knife, there was commission of offence of murder of Ravindra at the hands of Mahesh (Accused No.1).

24. In the light of discussion in foregoing paragraphs, there is no room for slightest doubt that the Appellant – accused Mahesh alone and alone, was responsible for the death of Ravindra. The aforesaid incriminating circumstance brought on record by the prosecution unequivocally indicate an involvement of the accused Mahesh and none else. Therefore, the findings of the guilt of the accused Mahesh, as recorded by the Trial Court are in consonance with the evidence on record, and there is no perversity as such. Hence, there is no scope for interference in the findings recorded by the trial court.

25. At this stage, the learned Counsel appearing for the Appellant made alternate submission that, since there was quarrel

and in the heat of passion, Mahesh, by using knife, which is used for the purpose of cutting the vegetables, has assaulted the deceased. Therefore, the case of the Appellant would fall under Exception Four to Section 300 of the Indian Penal Code. Hence, the case of the Appellant may be considered under Section 304 Part II of the Indian Penal Code, thereby setting aside the conviction and sentence under Section 302 of the Indian Penal Code and the Appellant may be released on sentence already undergone. In support of aforesaid submission, the learned Counsel placed reliance on the ratio laid down in the case of Jagpati v/s. State of Madhya Pradesh¹ and also in the case of Sayyad @ Saidu Ghudubhai Fulari².

. The alternate submission advanced by the learned Counsel appearing for the Appellant deserves no consideration for the reason that, the Appellant purchased the knife from Nandkumar Belgaonkar (PW-11), and then in planned manner committed the murder of Ravindra during the morning hours on 11th June 2009 in their own house. The injuries mentioned by the

¹ AIR 1993 SC 1360

² (1992) Mh.L.J. 493

Medical Officer Hari-Vitthal Maruti Patil (PW-13) in the post-mortem report would clearly indicate that the blow of knife was given on vital part of the body. The accused Mahesh assaulted by knife on chest of the deceased Ravindra. None of the witness has stated that they heard the quarrel. On the contrary, all the witnesses have consistently stated that they heard commotion from the house of the accused. Therefore, the case of the Appellant is not covered under any of the Exception to Section 300 of the Indian Penal Code.

26. In that view of the matter, in our considered view, the prosecution has proved the case against the accused Mahesh beyond reasonable doubt, and the findings of conviction recorded by the trial court against the Appellant needs no interference, since those are in-consonance with the evidence brought on record.

27. Hence, the Appeal is devoid of any merits and same stands dismissed.

(A.S. Gadkari, J.)

(S.S. Shinde, J.)