

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

CRIMINAL APPEAL NO.375 OF 2010

Anil Maruti Jadhav

Age : about 24 years, Occ.: Nil,

R/at : Chikhali, Tal: Induapur,

Dist: Pune.

... Appellant

Orig. Accused No.1

versus

1. The State of Maharashtra
(At the instance of
Walchandnagar Police Station)

2. Jaisingh Sahebrao Mane
Age : adult, Occ: Agriculturist,
R/at : Kurawali, Tal: Indapur, Dist: Pune ... Respondents

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- Mr.Hrishikesh Mundargi i/b. Mr.Devidas J. Jadhav, Advocate for the Appellant.
- Mrs.M.H. Mhatre, APP for the State/Respondents.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 12th JULY, 2018**

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1. The present Appeal is preferred by the Appellant
challenging the Judgment and Order dated 13/04/2010 passed

by the learned Additional Sessions Judge, Baramati, in Sessions Case No.122/09. By the impugned Judgment and Order the Appellant was convicted for the commission of offence punishable u/s 302 of the Indian Penal Code and was sentenced to suffer life imprisonment and to pay a fine of Rs.50,000/- and in default of payment to undergo rigorous imprisonment for three months. The Appellant was acquitted from the charges of commission of offence punishable u/s 379 of the Indian Penal Code. The Appellant was granted set off for the period of detention in jail from 27/06/2009 upto 13/04/2010 i.e. the date of passing the impugned Judgment and Order. Fine, if recovered, was directed to be paid to the complainant Jaisingh Sahebrao Mane, by way of compensation.

2. There were 7 accused who had faced the said Sessions Case No.122/09 including the present Appellant. The accused Nos.2 to 7 were charged for the commission of offence punishable u/s 379 r/w 34 of IPC. But they were acquitted of the said charge.

3. The prosecution case in nutshell is as follows:

The first informant Jaisingh Sahebrao Mane, had his agricultural field bearing Gat No.28 by the side of bank of river Neera. He was also one of the co-owners of Gat No.529 which is situated in the vicinity. On 27/06/2009, the complainant was working in his Gat No.28 planting sugarcane. He was working with his son Bhujang. At about 09.00 a.m.- 09.30 p.m. Bhujang noticed a tractor and two trolleys near the bed of the river. He saw the workers were loading the trolleys with sand. The trolleys were attached to the tractor of the Appellant. To prevent damage to his land, Bhujang rushed there to prevent the Appellant and others from excavating and transporting the sand. It is alleged that the Appellant got angry. He abused Bhujang and drove his tractor over Bhujang causing his death. The first informant Jaisingh Mane saw the incident. He rushed to the field and found that his son was lying dead. Thereafter he went to the police station and lodged his FIR vide C.R.No.126/09 at Walchandnagar Police Station u/s 302, 379, 504, 506 of the

Indian Penal Code. The investigation was carried out. The Appellant was arrested. As per the prosecution case, the Appellant himself produced the tractor before the police. Statements of various witnesses were recorded. The investigation was carried out. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Sessions.

4. During trial, the prosecution examined 11 witnesses. P.W.1 Ramesh Yashwant Pandhare was a Pancha for the Spot Panchanama. P.W.2 Mohan Rajaram Ranmode was a Pancha in whose presence the clothes of the deceased were seized. P.W.3 Vasant Sahebrao Mane was a Pancha in whose presence the tractor driven by the Appellant was seized. P.W.4 Mahesh Bhimrao More and P.W.5 Babasaheb Mahadev Kavale did not support the prosecution case and were declared hostile. P.W.6 Jaisingh Sahebrao Mane was the first informant and the father of the deceased. He is the sole eyewitness examined by the prosecution. P.W.7 Hanumant Kisan Danane had reached the

spot on hearing shouts and had seen the deceased lying on the ground. P.W.8 Vitthal Mansing Mane had taken photographs. P.W.9 Dr.Martand Arjun Jori had conducted the post-mortem examination. P.W.10 Ramchandra Shivram Kadam was a Pancha for the inquest Panchanama and P.W.11 Suryabhan Buwaji Mohite was the witness who had seen loading of the sand in the tractor. P.W.12 API Pradeep Bhargav Jadhav was the Investigating Officer.

5. We have heard the learned Counsel Mr.Hrishikesh Mundargi for the Appellant and the learned APP Mrs.M.H. Mhatre for the State of Maharashtra.

6. P.W.9 Dr.Martand Jori has deposed about the injuries suffered by the deceased and he had noticed the following injuries;

- (i) Abrasion on left forearm in middle one third of size 2 inches, oval shaped.

- (ii) Abrasion on left angle of mandible of size 1", oval shaped.
- (iii) Incised lacerated wound on dorsum of left foot of size 5" x 1" x muscle deep.
- (iv) Multiple abrasions on left lower limb from hip to elbow of size 1" x 3", oval shaped.
- (v) Lacerated wound on penis in middle part of size 4" x 1" x muscle deep (cavernosa), hole seen in between two cavel nozine.
- (vi) Semi circular incised lacerated wound on left side of abdomen just lacerated to penis and at the base scrotan of size 5" x 2" x cavity deep.
- (vii) Abrasion on chest wall with depressed chest of size 8" x 7" (breadth).
- (viii) Lacerated wound on right lobe of liver in middle of size 4" x 2" deep.
- (ix) Left vertricle is punctured at tip of size 1" x cavity deep.

- (x) Inferior vena cava torn at right atrium of size 1" x $\frac{1}{2}$ ".
- (xi) Extensive haemorrhage and laceration in stomach and mesentery.

7. These injuries had caused fracture of left pubic ramus and fracture of 3rd to 10th ribs of both sides. The cause of death was mentioned as "Extensive haemorrhage due to laceration of both lungs and liver."

8. The prosecution case obviously rests on the deposition of the sole eyewitness examined as P.W.6 Jaisingh Mane. The said witness was the father of the deceased Bhujang. He has deposed that he and his sons Bhujang, Shankar and Mahadev used to cultivate their agricultural field. They had their own agricultural field within village Kurawali bearing Gat No.28 and another field of which he was a joint owner, which was at some distance bearing Gat No.529. His residential house was about 1 to 1 $\frac{1}{2}$ furlong away from his fields. River Neera was flowing

nearby on the south of his field at Gat No.529. His Gat No.28 was located on the west side of Gat No.529. He has further deposed that on 27/06/2009, at about 09.00 – 09.30 a.m. when he and his son Bhujang were planting sugarcane in his Gat No.28, he saw loading of sand in one tractor on the Eastern side. Therefore his son Bhujang rushed towards the tractor. This witness also followed him. He further deposed that Bhujang warned the Appellant not to carry the sand through their field and he obstructed the Appellant's tractor. P.W.6 Jaisingh has further deposed that the Appellant drove the tractor on the person of his son Bhujang. Resultantly, Bhujang died on the spot. Thereafter the Appellant separated the tractor from the trolley and went away in his tractor. The other villagers came to the spot of incident. This witness then went to the police station and lodged his FIR which is produced at Ex.33. According to him, the accused Nos.2 to 7 helped the accused No.1 in loading sand in his tractor. This witness was cross-examined in respect of the location of his two fields and the location of the spot of incident. He had admitted that there was standing crop of

sugarcane in his field and height of sugarcane was about his own height. The cross-examination was on the line that during the month when the incident took place, there was no occasion for him to plant sugarcane crop.

9. This witness has deposed that the distance between Gat No.529 and 28 was about 1 to 1 ½ km. He was given a suggestion that this witness had demanded Rs.2 lakhs from the accused and on the refusal had threatened them to lodge complaint against them.

10. The learned Counsel Mr.Hrishikesh Mundargi, submitted that looking at the location of the spot of incident, it was not possible for this witness to see the actual incident. He submitted that as per his deposition P.W.6 was working in Gat No.28 and the incident had taken place towards south side of Gat No.529. Gat No.529 itself was not less than ½ Km away from Gat No.28. There was a standing sugarcane crop in Gat No.28 which was atleast at the height of this witness and

therefore it was not possible for him to have witnessed the incident. He further submitted that the accused bringing the tractor to the Police Station was not incriminating as it was not recovered pursuant to any statement u/s 27 of the Evidence Act.

11. Mr.Mundargi submitted that the conduct of P.W.6 Jaisingh, the first informant, was unnatural. P.W.6 did not try to provide immediate medical aid to his son Bhujang, which is unnatural. He further submitted that possibly the said witness was not present at the spot, otherwise his first natural reaction would be to remove his son to some hospital. We are unable to agree with the submission of Mr.Mundargi on this aspect. P.W.6 had seen the tractor being driven over his son on the spot. At that point nothing much could be done to save him. It was a shocking incident for P.W.6 to witness and therefore we do not think that his conduct was unnatural. The deceased was lying dead on the spot.

12. Looking at the evidence given by the P.W.6 Jaisingh we are satisfied that he is a truthful witness and is deposing

what had actually happened. He was working with the deceased in their Gat No.28 from where the deceased had rushed towards the tractor of the Appellant as the Appellant was carrying sand. The deceased warned the Appellant not to drive the tractor through their agricultural field. He has deposed that the deceased rushed to the tractor from his field means that the tractor was visible from where the deceased was standing with his father and therefore it was not impossible for the P.W.6 to witness the incident as he rushed just after his son.

13. The medical evidence supports the case of the P.W.6. The injuries are caused definitely by the tractor running over the person of the deceased. Mr.Mundargi further submitted that this witness has named two villagers who had rushed to the spot namely Hanumant Kisan Danane, Vilas Mane and others. Out of them, Hanumant Danane is examined as P.W.7, but he has not deposed about the incident. The evidence of P.W.6 does not show that he meant that these villagers were at the spot when the incident took place. The deposition shows that these

villagers came to the spot after hearing the shouts. Therefore we do not find any infirmity in the prosecution case for not examining any other eyewitness to the incident.

14. The tractor was brought by the accused at the police station and there were no blood stains seen on the Tyres. However, when the tractor was run over the deceased in this case, his ribcage was crushed. P.W.6 had clearly seen the Appellant driving the tractor and therefore police not taking the scrapping from Tyre of the tractor for chemical analysis, does not affect the prosecution case. The evidence of the sole eyewitness P.W.6 is reliable.

15. The acquittal of other accused viz. accused Nos.2 to 7 also does not affect the prosecution case against the Appellant. The main question is that of the murder of deceased Bhujang. The transportation of the sand was a backdrop and if the trial Court did not find sufficient material to convict the other accused, who were charged only for commission of offence u/s

379 of IPC, it does not mean that the Appellant had not committed the main offence of murder.

16. From the evidence of the eyewitness we are satisfied that the incident had taken place in the manner described by P.W.6 Jaisingh. Mr.Mundargi further submitted that the offence will not fall within the definition of murder as provided u/s 300 of IPC, but would be a much lesser offence. Again we are unable to agree with Mr.Mundargi on this count. In the first place, the Appellant himself was conducting illegal activity of excavating sand. The deceased was worried that tractor would be driven through his field causing damage. He tried to prevent the accused from doing this illegal act. The Appellant did not pay any heed and brutally drove the tractor causing the death of the deceased. We do not see as to how this brutal act will not fall within the section 300 of IPC. The fatal injuries were caused intentionally.

17. In support of his contention that the offence could not

be that of murder and that it would be an offence of culpable homicide not amounting murder, Mr.Mundargi relied on a few Judgments.

18. He submitted that in the case of ***Shivappa Buddappa Kolkar Vs. State of Karnataka and Ors. reported in (2004) 13 Supreme Court Cases 168***, in a similar case it was held that the offence would be one u/s 304(Part I) and not u/s 302 of IPC. He submitted that the facts were similar. In that case the deceased had obstructed the accused, who was taking his bullock cart through the deceased's field. In the quarrel the accused suddenly picked up an Axe kept in the cart and inflicted one blow on the head of the deceased. In the said case after giving one blow the accused stood near the deceased who was on the ground in injured condition, asked him to get up and to smoke a beedi. In these facts the Hon'ble Supreme Court has held that the accused had no intention of causing death of the accused. The facts in this case speak for themselves. However, in the present case before us, the facts are very different and the Appellant had

deliberately, with full intentions, had run over his tractor on the deceased Bhujang. Therefore we do not think this judgment relied on by the learned Counsel Mr.Mundargi helps him in any manner.

19. Mr.Mundargi further relied on another judgment on the same point in the case of *Shakti Dan Vs. State of Rajasthan, reported in (2007) 15 Supreme Court Cases 68*. In that case the accused had throttled his mother to death because she had advised him not to quarrel with his wife. The facts in that case are very different and therefore the said judgment is of no help to Mr. Mundargi in his contention that the offence would fall u/s 304 of IPC.

20. Mr. Mundargi thereafter submitted that the learned trial Judge did not record the statement of the Appellant u/s 313 of Cr.P.C. properly. The question put to him did not explain the exact circumstances against him. Therefore the Appellant was deprived of an opportunity to meet the circumstances

against him. He particularly referred to the question Nos.12 to 15 in the statement. He emphasized on Question No. 14 which reads thus;

“He has further deposed that at that time the tractor driver drove the said machine over the body of the Bhujang and killed him on the spot. What (do) you have to say about it?”

The Appellant answered that 'It was false.' Mr.Mundargi submitted that the question indicates that the tractor was driven by someone else and not by the Appellant. In support of his contention Mr.Murndargi relied on the judgment of Hon'ble Supreme Court in a few cases as under:

- (1) Naval Kishore Singh Vs. State of Bihar, reported in (2004) 7 Supreme Court Cases 502;***
- (2) B.Venkat Swamy Vs. Vijaya Nehru and another, reported in (2008) 10 Supreme Court Cases 260;***
- (3) Latu Mahto and Another Vs. State of Bihar, reported in (2008) 8 Supreme Court Cases 395;***

***(4) Narendra Singh and Another Vs. State of M.P.,
reported in (2004) 10 Supreme Court Cases
699.***

21. In all these cases it is held that the accused must be put the incriminating circumstances against him to enable him to give his explanation. While it is true that recording of statement of any accused u/s 313 of Cr.P.C. is not an empty formality. The trial Judge is required to put all the incriminating circumstances to the accused to enable him to give explanation if any. In the present case, we find that incriminating circumstances were put to him. In this context, reference can be made to the Question No.16 which reads thus;

“He has deposed that at that time you separated the trollies from the tractor machine and flee (fled) away from the spot of the incident. What you have to say about it?”

The Question No.49 reads thus:

“Do you want to assign any reason as to why the complainant Jaysingh Mane and other witnesses are deposing against you?”

22. Thus, reading the entire statement u/s 313 of Cr.P.C. we are of the opinion that the Appellant was given proper opportunity to explain the incriminating circumstances against him. The Appellant was well aware of the deposition of the prosecution witness P.W.6 Jaysingh Mane and he was asked specifically as to why the said witness was deposing against him. Thus, reading statement u/s 313 of Cr.P.C. as a whole, we find that there was proper compliance of section 313 of Cr.P.C. and no prejudice is caused to the Appellant and therefore we do not find any force in the contention of Mr.Mundargi in that behalf.

23. In view of the above discussion, we do not find any merit in the Appeal. Hence the Appeal is dismissed.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)