

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

CRIMINAL APPEAL NO. 711 OF 2011

Shivaji Ananda Chavan,
Age 50 years, Occ. Labourer,
R/o. Pakani, Tal.Mohol,
District Solapur.
At present in Yerawada Central Prison,
Pune.

...Appellant.

V/s.

The State of Maharashtra

... Respondent

Mr. Rajesh Dharap, Appointed Advocate by Legal Aid Committee for the
Appellant.

Smt. S.V.Sonavane, APP for the Respondent/State.

**CORAM : S.S. SHINDE AND
A.S.GADKARI, J.**

DATE : 30th October, 2018

JUDGMENT : (Per A.S.Gadkari, J.):

1. The learned II Ad-hoc Additional Sessions Judge, Solapur has convicted the appellant for offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further suffer rigorous

imprisonment for three months in Sessions Case No.239 of 2009 by its Judgment and Order dated 22.3.2011. The said Judgment and Order dated 22.3.2011 is impugned herein by the appellant.

2. The prosecution case in nut shell is that, the appellant and deceased were working as security guards at Lahoti Company situated at MIDC, Chincholi, Solapur. On 8.4.2009 the duty of the appellant and the deceased was over and the duty of other two security guards namely Sudhakar Arjun (P.W.3) and Shivaji Shinde (P.W.4) was to start. That, before changing hands of duty of the said four persons i.e. appellant, Madhukar Patil (deceased), Sudhakar Arjun (P.W.3) and Shivaji Shinde (P.W.4) they took dinner. After dinner there was a quarrel between Madhukar Patil (deceased) and the appellant on the count of sharing hours of duty. That, the appellant took out a cycle chain which was tied to his waist and assaulted the deceased with it. Shri. Sudhakar Arjun (P.W.3) snatched the said chain and threw it away whereupon the appellant took out a sharp edged weapon (knife) which was concealed on his person and stabbed with it on the person of Madhukar Patil (deceased). Madhukar Patil collapsed on the spot. The said two witnesses namely Sudhakar Arjun (P.W.3) and Shivaji Shinde (P.W.4) thereafter called

the relatives of the deceased and the police. The deceased was rushed to hospital. Madhukar Patil was declared brought dead by the concerned Doctor. The post mortem examination of the deceased was conducted at Rural Hospital, Mohol, District Solapur. The Medical Officer found the following injuries on the person of the deceased.

1. 3-Stab wounds on left side of chest below mammary area of dimension 2cmx0.5cm x cavity deep;
2. Stab wound in epigrammatic 2.c.m.x0.5 cavity deep.
3. 1-scratch abrasion on left shoulder 2c.m.x1-c.m.

The Medical officer also found fracture to 7th rib of left side. The Medical Officer gave opinion as to the cause of probable death as "Hemorrhagic shock due to left haemothorax due to stab wounds on left chest. The appellant came to be arrested on 9.4.2009. After completion of investigation, the police submitted charge sheet in the Court of competent jurisdiction i.e. in the Court of Judicial Magistrate First Class at Mohol.

3. As the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class Mohol committed the present case to the Court of Sessions at

Solapur for trial. After committal, the Trial Court framed charge below Exh.-3 which was read over and explained to the appellant in Marathi vernacular language to which he denied and claimed to be tried. The defence of the appellant was of total denial.

The prosecution in support of its case has examined in all seven witnesses. The learned Trial Court after recording the evidence and after hearing the parties to the present case was pleased to convict the appellant by the impugned Judgment and Order dated 22.3.2011 as noted earlier.

4. Mr. Dharap, the learned counsel appointed by the Legal Aid Committee, to espouse the cause of the appellant, vehemently submitted that the eye witnesses namely Sudhakar Arjun (P.W.3), Shivaji Shinde (P.W.4) in their testimony have stated that, they saw the appellant causing the stab wounds on the stomach of the deceased Madhukar Patil. However, as per the post mortem notes, the deceased had also received three other stab wounds on the left side of chest below mammary area and therefore, the version narrated by the said witnesses creates doubt in the mind. He further submitted that, before assaulting Madhukar Patil (deceased) and /or causing said stab wounds, altercation took place between the appellant and the

deceased and due to the said grave and sudden provocation the appellant assaulted the deceased. Therefore, the present case would fall within the purview of Exception 4 to Section 300 of the Indian Penal Code and in view of the facts of the present case and the appropriate conviction would be under Section 304 part II of the Indian Penal Code. He further submitted that there is delay of about 10 days in sending the sample to the Forensic Science Laboratory by the investigating agency and therefore the benefit of the said delay would accrue in favour of the appellant. He therefore, prayed that, the present appeal may be allowed and the appellant may be acquitted from the charges framed against him. In the alternative, he prayed that, conviction of the appellant under Section 302 may be modified and the appellant may be convicted and sentenced under Section 304 Part II of the Indian Penal Code. .

5. Per contra the learned APP. opposed the appeal and submitted that, the present case is based on ocular evidence. She further submitted that the prosecution has proved its case beyond reasonable doubt and therefore, interference of this Court in the impugned Judgment and Order, in its appellate jurisdiction is unwarranted. She therefore, prayed that, the present

appeal may be dismissed by maintaining conviction and sentence imposed against the appellant.

6. At the out set, it is to be noted here that, the present case is based on ocular evidence of two witnesses namely Sudhakar Arjun (P.W.3) and Shivaji Shinde (P.W.4). Both the witnesses in their testimony have categorically stated that on 8.4.2009 the said two witnesses along with Madhukar Patil (deceased) and appellant took dinner after 8.00 p.m. and after dinner a quarrel took place between the appellant and the deceased over sharing of duty hours. At that time the appellant initially took out a cycle chain which was tied to his waist and assaulted the deceased. That, Sudhakar Arjun (P.W.3) snatched the said chain from the hands of the appellant and threw it away. The appellant thereafter took out a knife which was seized from his person and stabbed with it on the stomach of the deceased. The deceased shouted as " Melo Melo" and collapsed dead on the spot.

Shri. Shivaji Shinde (P.W.4) has also corroborated the version of P.W.3 in all aspects however, he has stated that, the deceased snatched the chain from the hands of the appellant and threw it away and thereafter the appellant took out a knife and stabbed with it on the stomach of deceased

and ran away.

7. Mr. Dharap, learned counsel appearing for the appellant submitted that, P.W.3 has stated about snatching of chain by him and P.W.4 has stated about the snatching of chain by deceased from the hands of the appellant, is a material contradiction which goes to the root of the matter and therefore, testimony of the said two witnesses creates doubt about their bonafide.

After perusing the evidence of the said two witnesses minutely, we are of the considered view that, the said contradiction is a minor irregularity in the evidence of the said two witnesses qua the fact of snatching of the chain only, from the hands of the appellant either by P.W.3 or deceased. However, the fact remains that, the appellant took out a cycle chain which was tied to his waist and with the same assaulted the deceased has not been shaken by the appellant while cross examining the said two witnesses.

We find that the evidence of Sudhakar Arjun (P.W.3) and Shivaji Shinde (P.W.4) is fully reliable and trust worthy. They are natural witnesses who were present at the spot being security guards of the said company and had been there at the time of change of duty. As the evidence discloses that, the said two witnesses also had their dinner with the appellant and deceased

just prior to the commission of offence by the appellant.

8. As noted earlier the Medical Officer has found that the deceased had received the aforestated four injuries. The post mortem notes (Exh.43) are admitted by the appellant under Section 294 of the Code of Criminal procedure. The Medical Officer has opined about the cause of probable death of the deceased as "Hemorrhagic shock due to left haemothorax due to stab wounds on left chest". The evidence on record clearly discloses that, a knife admeasuring 9.2 inches including its grip or holder admeasuring 5.2 c.m. was recovered at the instance of the appellant from his residential premises. Shri. Shankar Chormale (P.W.5) has proved the said recovery panchanama which is at Exh.25. It is to be further noted here that, the said knife was stained with blood and after analysis by the Forensic Science Laboratory it is revealed that, the said knife (Exhibit 8) was having human blood with "A" blood group. The clothes of the appellant were also seized by the Investigating agency which were on his person at the time of commission of offence and in chemical analysis report it is revealed that, the said blood stains were of human origin. The appellant has not offered any explanation about the finding of the blood stains on his clothes.

9. The contention of the learned counsel for the appellant that, the present case falls within the purview of Section 300 part II cannot be accepted for the reason that, though initially a quarrel took place between the appellant and the deceased, Madhukar Patil, the appellant assaulted the deceased with cycle chain which was tied to his waist and concealed on his person and when P.W.3 snatched the said chain and threw it away the appellant immediately took out a knife which was concealed on his person and assaulted the deceased with it. As noted earlier, the deceased had suffered four grievous injuries which have caused his death instantaneously on the spot. Thus, it appears that assault on the deceased by the appellant was not caused due to grave and sudden provocation but it appears to us that, it had been caused with premeditation of mind as the appellant had come on the spot duly armed with weapons and therefore, the present case would certainly fall within the ambit of Section 302 of the Indian Penal Code and therefore, the conviction and sentence of the appellant cannot be altered from Section 302 to 304 Part II of the Indian Penal Code.

In view of the above, we are of the considered view that, there are no merits in the appeal and the appeal is accordingly dismissed.

10. Before parting with the Judgment we place on record our words of appreciation for the efforts put in by Shri. Dharap, learned Advocate appointed by the Legal Aid Committed in ably assisting this Court and we quantify his fees at Rs.10,000/-. The Legal Aid Committee is directed to pay the said fees to Shri. Dharap, Advocate within a period of four weeks from the date of receipt of this Order.

11. The registry to communicate this Order to the appellant who is at present lodged in Yerawada Central Prison, Pune without delay.

12. 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.)