

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

CRIMINAL APPEAL NO.1 OF 1996

Vithal Duryodhan Kamble
Residing at Manik Peth, Akkalkot,
Tal. Akkalkot, Dist. Solapur.
(Presently appellant is in jail)

...Appellant
(Orig. Accused)

Vs.

The State of Maharashtra

...Respondent
(Orig. Complainant)

Mrs. Nasreen S.K. Ayubi, appointed as Legal Aid Counsel for the appellant.

Mrs. M.M. Deshmukh, APP for the respondents-State.

**CORAM : S.S. SHINDE &
N.B. SURYAWANSHI, JJ.**

JUDGMENT RESERVED ON : 6TH NOVEMBER, 2019.

JUDGMENT PRONOUNCED ON : 19TH NOVEMBER, 2019.

JUDGMENT : (Per N.B. SURYAWANSHI, J.)

. The appellant impugns his conviction for murder, passed by the learned sessions court in Sessions Case No.118 of 1995 on 30th October, 1995, thereby sentencing the appellant to suffer life imprisonment.

2. Briefly stated the prosecution case is as under :-

First informant, PW-7, Nabilal Lala Nagure, resident of Manik Peth, used to reside with his family, which includes wife Yasina, son Lala, Mahiboob and Ramjan. Mahiboob used to sell ice in villages. Since ice was not available, Mahiboob was at home.

Accused Vithal was also doing the business of selling ice. One year before the incident, there was quarrel between Mahiboob and accused at Fattasing Chouk, Akkalkot, in which Mahiboob assaulted accused with iron rod on his head and accused assaulted Mahiboob by ice cutter (Tocha) in his stomach. However, that quarrel was settled by the father of Mahiboob, viz., the first informant.

On 6th May, 1995 at about 9.30 a.m., the first informant went in the village for work. His son Ramjan met him on the main road and informed that accused Vithal Kamble has assaulted Mahiboob with Jambia and he is taken to hospital by his mother. The first informant then rushed to the hospital and saw that there was bleeding injury on the left side collar bone of Mahiboob, due to

which he succumbed to death. On inquiry, the first informant learnt that Mahiboob was near Ambabai Temple at Manik Peth in the morning. He threw bidi by raising both the hands, which irritated accused Vithal, who quarreled with Mahiboob saying that, on seeing accused Vithal, Mahiboob raised his hands and threw the bidi. At about 11.30 a.m. when Mahiboob was narrating the said incident to Vishnu Patole and Vishnu Kshirsagar, accused Vithal came there and gave a stab injury to Mahiboob with a Jambia, which looked like Gupti, near left side collar bone at the neck and fled away from the spot.

The first informant lodged information at Exhibit 32, which was registered at Akkalkot (North) Police Station, being C.R. No.26 of 1995, under section 302 of the Indian Penal Code [for short 'IPC']. Immediately, inquest panchanama (Exhibit 17) of the body of the deceased was prepared. Post-mortem of the body of the deceased was conducted and PM notes are at Exhibit 29. Spot panchanama was conducted vide Exhibit 18.

On 8th May, 1995, accused was arrested.

On 9th May, 1995, the accused agreed to produce the

knife. Accordingly, memorandum panchanama (Exhibit 23) was prepared and the bloodstained knife (Article 11) was recovered vide panchanama (Exhibit 24).

After completion of investigation, charge-sheet came to be filed and the matter was committed to the Court of Session and numbered as Sessions Case No.118 of 1995. The accused was charged under section 302 of the IPC.

3. In support of its case, the prosecution has examined in all total 15 witnesses. There are two eyewitness, viz., PW-5 Vishnu Kshirsagar and PW-9 Vishnu Patole, who have given the exact account of assault by the appellant-accused to the deceased. PW-4 Mahamood Magbul Hagaldiivate is examined on the point that after the assault, on hearing the hue and cry, he came out of the house, which is near the spot of incident and he saw the accused was running towards Maindargi Road and one weapon like Gupti was in his hand. He further deposed that Mahiboob was running towards his house by putting his hand on his shoulder. On inquiry, PW-5 Vishnu Kshirsagar and PW-9 Vishnu Patole told him that accused assaulted Mahiboob by Jambia and ran away.

4. Heard the learned counsel for the appellant and the learned APP for the State. We have gone through the record and proceedings of this case with the help of both the learned counsel.

5. The learned counsel for the appellant assails the conviction by arguing that the learned trial court has misread and misconstrued the evidence on record and there is no sufficient evidence on record to warrant conviction of the appellant.

6. Per contra, the learned APP points out that there is overwhelming evidence showing the complicity of the accused in the present crime. There are two eyewitnesses, recovery of weapon, stained with the blood of deceased's blood group, is proved. The bloodstained clothes of the accused show presence of bloodstains of the blood group of deceased. Hence, she vehemently urged that the conviction may not be interfered with.

7. The homicidal death of Mahiboob is proved on record by PW-6 Dr. Manohar More. PM notes (Exhibit 29) wherein the injury is

in column No.17 is described as, 'incised sharp cutting injury spindle shape obliquely placed at the base of neck in clavicular fossa (mid portion) of size 4 x 3 c.m. deep chest cavity. Blood coming out with air bubbles. Muscles and vessels underneath are exposed. Above injury is grievous in nature, within six hours and it was antemortem injury'. On internal examination, PW-6 Dr. Manohar More recorded in column No.20 that, 'plura left side punctured, at scapular anterior region. Right lung was collapsed. Left lung was having incised wound of size 4 x 3 c.m. deep 3 c.m. into lungs tissue, bleeding with air bubble present. Left side of the heart was empty while right was full of clots', which according to medical officer was corresponding to the external injury mentioned in column No.17.

8. The recovery of the weapon is proved on record by PW-2 panch witness Kashinath Bandgar. PW-2 has also proved the seizure of bloodstained clothes of the accused, vide seizure panchanama (Exhibit 20). PW-3 Shakur Shaikh, panch witness, has proved the memorandum and recovery panchanama of knife/Jambia at the instance of the appellant-accused, which was hidden behind Rajwada, under the bush of Subabul.

9. The CA reports proved on record show that the blood group of deceased was 'A' and the CA reports of Jambia (Article 11), full pant and shirt of accused were found with bloodstains of blood group 'A'. Even the article Nos. 1 to 8, viz., earth, stones from the spot of incident, full pant, banian, underwear, sleeper, one thread were found stained with blood of blood group 'A'.

10. The prosecution has proved the guilt of the appellant-accused by bringing on record the cogent and reliable evidence and the learned trial court has rightly convicted the appellant-accused.

11. We have no hesitation in accepting the finding recorded by the learned trial court that the appellant-accused caused injury on the vital part of the body of the deceased with Jambia, which resulted into his death. We are also in agreement with the finding of the learned trial court that the evidence of the eyewitnesses and the other evidence is credible, which has proved the complicity of the appellant-accused in the present crime.

12. The learned counsel for the appellant-accused also argued that a single blow was given by the appellant-accused to the deceased, which proved fatal and the appellant-accused neither had intention nor the knowledge that such an injury would result into the death of Mahiboob. The argument is that the appellant at the most could be convicted for any other minor offence.

13. The learned APP, on the other hand, strongly opposed this submission, stating that though a single blow was given, it was sufficient to cause death. Hence, the appellant-accused had intention and knowledge and the conviction recorded by the learned trial court under section 302 of the IPC is proper.

14. After giving our careful thought to the facts of the present case, it is admitted that a single blow was given by Jambia by the accused on the vital part of the body of Mahiboob. He has not attempted to give more blows, which he could have given if he had intention to murder deceased Mahiboob. The appellant-accused surely had the knowledge that any injury with Jambia on the vital part would cause death, though, he may not have intended to

commit the murder.

15. When the appellant-accused gave one blow with Jambia on the neck of the deceased, intention to cause death may not be imputed to him, but it would be reasonable to infer that he had knowledge that any injury on the vital part of the body of the deceased would cause death. Therefore, the appellant-accused can be convicted under section 304, Part II of the IPC.

16. In this view of the matter, we alter the conviction of the appellant-accused from section 302 of the IPC to one under section 304, Part II of the IPC. Hence, the following order :-

ORDER

- (i) The Appeal is partly allowed.
- (ii) The conviction of the appellant-accused under section 302 of the Indian Penal Code is altered to one under section 304, Part II of the Indian Penal Code.
- (iii) Consequently, the sentence of life imprisonment awarded to the appellant-accused is set aside and he is sentenced to suffer rigorous imprisonment for seven

years for the altered conviction.

(iv) The appellant-accused shall surrender his bail bonds to serve out the remaining part of his sentence.

(v) We appreciate the able assistance given by learned counsel Mrs. Nasreen S.K. Ayubi during the course of hearing of the Appeal and direct the Legal Aid Services to pay her Rs.10,000/- towards the professional fees and in addition to it actual expenses incurred, within one month from today.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)