

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

**CRIMINAL APPEAL NO. 655 OF 2012
WITH
CRIMINAL APPLICATION NO. 58 OF 2018
WITH
CRIMINAL APPLICATION NO. 569 OF 2016
WITH
CRIMINAL APPLICATION NO. 63 OF 2016
IN
CRIMINAL APPEAL NO. 655 OF 2012**

Shri. Sanjay Tarasingh Thakur

Age-35 years, Occ-Security Guard (at present nil)

R/at- At present lodged in

Yerwada Central Prison, Pune.

R/at Sr.No. 66/514, Takale Chawl,

Vak Vasti, Ganesh Nagar, Pune.

**... Appellant.
(Original Accused)**

V/s

The State of Maharashtra

Through PI Sangvi Police Station, Pune.

**... Respondent.
(Original Complainant)**

Ms. Payoshi Roy i/b Mr. Yug Mohit Choudhary, for the Appellant/
Applicant.

Mr. A.R. Patil, APP for the State-Respondent.

**CORAM : PRASANNA.B.VARALE &
V. G. BISHT, JJ.**

DATE : 8th October, 2020.

JUDGMENT (PER : V. G. BISHT, J.)

The instant criminal Appeal under Section 374(2) of the Code of Criminal Procedure ('Cr.P.C.' for short) has been preferred by the appellant-accused aggrieved by the judgment and order of conviction and sentence passed by the Additional Sessions Judge, Pune in Sessions Case No. 631 of 2010, dated 20th April, 2012, by which the Additional Sessions Judge convicted the appellant-accused for the offence punishable under Section 302 of the Indian Penal Code ('IPC' for short) and sentenced him to undergo life imprisonment with fine of Rs.1000/- and in default of payment of fine, directed to undergo further rigorous imprisonment for six months. The Additional Sessions Judge further convicted the appellant-accused for the offence punishable under Section 324 of IPC and sentenced him to undergo rigorous imprisonment for a period of one year with fine of Rs. 500/- and in default of payment of fine, directed to undergo further rigorous imprisonment for a period of three months. However, the Additional Sessions Judge was pleased to acquit the appellant-accused of the offences punishable under Sections 307 and 397 of IPC. The Additional Sessions Judge ordered both the sentences to run concurrently. The Additional Sessions Judge was pleased to grant benefit of set-off as per Section 428 of the Cr.P.C. for the period during which the accused remained in jail as an under-trial prisoner.

2 The necessary facts are to the following effect:

(a) The informant and her husband, namely, Chandrakant Narayan Makar ('deceased' for short) at the relevant time used to reside on an open land near Mula river of village Pimple Nilakh, Pune. One Rama Pawar and his wife Smt. Bhima Pawar, who is son of informant's sister, was her neighbour. All of them used to catch fishes in the said river.

(b) On 05.05.2010, they all returned from fishing at about 10-00 p.m. while the informant was cooking the food, accused, namely, Sanjay, who was acquainted with her husband and said Rama Pawar came. Rama Pawar and accused consumed liquor. Thereafter, accused approached deceased and demanded liquor. As the deceased refused to part with his liquor, the prosecution alleges, the accused threatened that he would see the deceased and would kill him and then went away.

(c) The prosecution then alleges that at about 11-00 p.m., the accused again visited their hut. The informant was sitting near the fireplace (चुल) and the deceased beside her. The accused exhorted the deceased to stand up and uttered, why he did not give him liquor and then took out a concealed sword and gave

blow of it in abdomen and on the neck of the deceased. It is further alleged that when the informant tried to catch hold of accused, the accused gave blow of sword on her left hand, head and back. Rama Pawar and his wife Smt. Bhima having seen the incident and being frightened fled away from the spot. The informant became unconscious.

(d) According to prosecution, on 06.05.2010 at about 5-00 a.m., the informant regained consciousness and found her husband motionless and an amount of Rs.5000/- was also missing from the pocket of deceased. She put a quilt on the person of her husband and then reached her sister's house at about 7-30 a.m. and narrated the incident. Her sister, on her part, with the help of one Somnath Navale summoned informant's son, namely, Shankar Makar from Alandi who took her to YCM Hospital, Pimpri, Pune at about 10.30 a.m. However, her husband had died on the spot itself.

3 It appears from the record that in the hospital PSI B.D. Koli of Sangvi Police Station recorded the statement of informant which was treated as FIR and registered the offence vide C.R. No. 198 of 2010 for the offences under Sections 302 and 307 of IPC.

4 It further appears from the record that PW-8 Shri. Digambar Pandurang Jadhav, API, investigating officer, visited the place of incident and prepared spot panchanama and seized various articles from the spot, drew inquest panchanama of the dead body and seized clothes of the deceased. Similarly, PW 9 Shri. Shantaram Tukaram Taide, Sr. PI. and investigating officer, recorded the statements of witnesses, seized cloths of informant and accused, recorded disclosure statement under Section 27 of the Indian Evidence Act of the accused and pursuant to said disclosure statement seized blood stained sword and cash amount of Rs.1000/-, forwarded seized property to Forensic Science Laboratory and after having received CA reports and conclusion of investigation forwarded the charge-sheet against the accused.

5 To substantiate the charge against the appellant-accused, the prosecution has examined as many as nine witnesses and exhibited number of documents. The appellant-accused was questioned under Section 313 of the Cr.P.C. about the incriminating evidence and circumstances and he denied all of those circumstances as false, expressed ignorance and submitted that he being innocent has been falsely implicated.

6 Upon appreciation of oral evidence and the circumstances, the trial Court convicted the appellant-accused for the offences punishable under Sections 302 and 324 of the IPC and sentenced him in the manner stated herein-above. Hence, this Appeal.

7 Ms. Roy, learned counsel for the appellant-accused, has filed on record written submissions. We have minutely perused written submissions so filed on record.

8 Mr. Patil, learned APP, on the other hand, taking exception to the submissions of the learned counsel for appellant-accused, wholeheartedly supported the impugned judgment and order of conviction passed by the learned trial Court. According to learned APP, apart from the ocular evidence of the material witnesses, medical evidence and as also the reports of Forensic Science Laboratory amply prove the involvement of accused in the crime. According to him, the learned trial Court has taken into consideration all theses relevant aspects and rightly returned the findings of guilt against the accused. There being no illegality or perversity the conviction so awarded by learned trial Court should not be disturbed, argued learned APP.

9 From the record and as also the impugned judgment and order, it

appears that the homicidal death of deceased is not at all in dispute. PW 6-Dr. Vijaya Narayan Palange (Exh 26) has been examined by the prosecution, who during the course of autopsy found 18 antemortem injuries as per postmortem report (Exh. 27) and it appears from her evidence that the cause of death was due to multiple fractures and injuries because of profuse bleeding. Her evidence further shows that the injuries noted by her were sufficient to cause death in ordinary course of nature. Moreover, the cut wounds were possible by sharp object. Further, according to her, injury nos. 1 to 18 mentioned in the Postmortem report were possible by article (weapon) which was shown to her. Thus, there is not much hurdle to conclude that deceased met homicidal death on account of injuries sustained by him.

10 In the present case, at the outset, we note that PW 1-informant apart from being an eye witness is also an injured witness. She was injured in the course of the occurrence. In **State of U.P V/s Kishan Chand and Ors.** ¹, the Hon'ble Apex Court held that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence.

¹ (2004)7 SCC 629

11 The law on this point is summarized by Hon'ble Apex Court in **Abdul Sayeed V/s State of Madhya Pradesh** ² by observing that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

12 PW-1 informant has given a very vivid description of the entire incident. She states in her evidence (Exh.16) that deceased Chandrakant was her husband. At the relevant time she was living on the river bank of Mutha at village Sathe Pimple. The son of her sister, namely, Rama Pawar (PW-3) and his wife were also living with them in a tent. She knows accused and she is illiterate.

13 It is her further evidence that the accused was working as a watchman at Baner and often used to visit their tent in the night hours. In the night of incident, the accused visited the tent of Rama Pawar and

² (2010) 10 SCC 259

both consumed liquor. The accused thereafter visited her tent and had liquor with her husband (deceased). The accused demanded liquor from her husband but he refused. The accused then went away by saying that he will come back. The accused again came to her tent. She was cooking meals while her husband was sitting beside her. According to her, the accused asked her husband to get up and then started assaulting her husband with one weapon. He assaulted her husband with that weapon on hand, head and back. She could not see the nature of weapon exactly because of darkness. It is her further evidence that when she tried to intervene to save her husband, the accused also assaulted her with the same weapon on her head and left hand. As a result of which she suffered bleeding injuries and became unconscious.

14 It is her further evidence that she regained consciousness at about 4-00 a.m. and found her husband dead. She also found missing an amount of Rs.5000/- from the pocket of her husband. She went to house of her sister Sulabai and narrated the incident. The husband of Sulabai then called her son, namely, Shankar (PW-2) from Alandi. Shankar came at about 10-00 am and took her to YCM Hospital for treatment. According to her, police visited said hospital and recorded her statement. She then proved her report at Exh. 17.

15 From the substantive evidence of informant which is broadly in corroboration of contents of FIR, it can be seen that in the night of incident the accused had liquor firstly with Rama Pawar (PW 3) and then with the deceased. The accused even demanded liquor from the deceased but the latter refused. The accused then left the place by saying that he would come back and indeed he came back only to assault the deceased with a weapon and when the informant intervened, she was also assaulted by the same weapon on her head and left hand. It is also apparent that at the relevant time Rama Pawar (PW 3) was very much present. Thus, it was Rama Pawar, who was also an eye witness to the incident and therefore, we deem it proper to go through his evidence as well.

16 Before we go through the evidence of PW 3-Ramdas Shankar Waghmare i.e. Rama Pawar, we would like to go through the evidence of PW-2 Shankar Chandrakant Makar, son of PW-1 informant. This witness broadly supports the injuries seen by him on the person of her mother when he got admitted her to the YCM Hospital, Pimpri for treatment. In the cross-examination, PW 2 clearly states that Ramdas Shankar Waghmare is also known as Rama Pawar. Similarly, PW-9, investigating officer, states in his cross-examination that at the time of recording of

supplementary statement of informant on 10/05/2010 about clarification of Rama Pawar, she stated that the correct name of Rama Pawar is Ramdas Shankar Waghmare and not Rama Pawar and the same was wrongly mentioned in her FIR. Be that as it may, the facts remain that PW 3 and said Rama Pawar are one and the same person. Therefore, there should not be any confusion in this regard.

17 Reverting back to the aspect the examination of evidence of PW-3, we find his testimony at Exh. 19. PW 3 states in his evidence that on the day of incident accused came at about 9-00 pm. The accused quarreled and started teasing Chandrakant over liquor and demanding liquor from him but the deceased was not ready to give him liquor. After he intervened, the accused went away only to come again with one weapon. According to him, he could not see the exact nature of weapon because of darkness and it might be like sword. The accused assaulted deceased with the weapon brought by him on stomach and other parts of the body. He also assaulted the informant on her head, hand and back. He got frightened and went away with his wife and Sakharam to Mandgaon.

18 From the evidence of PW-1 informant and PW-3 eye witness, it is

more than clear that because of pitch-dark both of them could not see the kind of weapon used by the accused at the time of assault but according to PW-3, it was like sword.

19 It is also pertinent to note that it is not specific evidence of PW 1 and PW 3 that there was only single assault and rather according to them the accused had started assaulting the deceased with the weapon with which he was armed. As already noted because of darkness they rightly could not have seen the number of blows but the postmortem report reveals as many as 18 injuries on the person of the deceased. There is no serious dispute on this count.

20 In the written submission on behalf of the appellant-accused, the learned counsel has laid much emphasis about the contradiction in medical evidence and ocular evidence vis-a-vis injuries sustained by PW-1 informant. According to learned counsel, the medical evidence shows that her injuries were caused by hard and blunt weapon and the fact that a wooden rod was found on the spot, it makes highly improbable as is put forth by the prosecution and as also by PW-1 informant in her evidence that she was assaulted by sword. Thus, conflicting evidence renders the version of informant unreliable. We do

not find merit in this submission.

21 PW-7 Dr. Prashant Vasant Shelar states in his evidence (Exh.28) that on 06/05/2010 he was attached to YCM Hospital as a Casualty Officer and that day he examined informant and found injuries namely, (i) CLW over left forehead 4x1cm scalp exposed, (ii) CLW over left hand over dorsal aspect 4x0.5cm, (iii) CLW over left scapular region 2x0.5cm. According to him, the injuries were possible by hard and blunt object.

22 As far as above injuries noted by Medical Officer are concerned, the same corroborates PW-1 informant as to the injuries sustained by her during the course of occurrence. It is also clear from the medical evidence that the injuries sustained by PW-1 informant were possible by means of hard and blunt object. We at once note here from the impugned judgment of the trial Court and more particularly from para 32 that the weapon in question was half circled sword with wooden handle and stand. Therefore, and as already noted, as there was darkness, the accused must have assaulted the informant from the wooden handle of the seized weapon otherwise she would not have sustained the injuries as noted by PW-7 Medical Officer. Had it been from the sharp side of the weapon then definitely there would have been

cut injuries and therefore, to say that there is contradictions in ocular and medical evidence is far fetched and cannot be approved. This being so all the decisions relied by learned counsel on this aspect do not further the stand taken by learned counsel.

23 In view of above, we hold that the testimonies of PW 1 and PW 3 are duly supported by the medical evidence. We hold that the learned trial Court has properly appreciated the evidence in this regard. We are not prepared to question the finding of the trial Court in this regard.

24 There are other positive evidence as well on the record in the form of seizure of weapon of offence at the instance of accused, blood stained uniform of accused, seizure of cap and whistle from the spot and findings of Forensic Science Laboratory.

25 PW-4 Ravindra Kashinath Yadav state in his evidence (Exh. 20) that on 07/05/2010, the accused took him and other police personnel to his house from where his uniform i.e. navy blue colour pant with monogram of security company and sky blue colour shirt with a monogram of security company having blood stains came to be seized and sealed under panchanama at Exh. 21. It is his further evidence that after some days he was again called by the police and in his presence

accused stated that he had kept sword in the bushes on the bank of river and accordingly his statement came to be recorded at Exh.23 and pursuant to said statement the accused took him and police to the bank of river and produced one sword from the bushes which came to be seized under the panchanama at Exh. 22.

26 The above evidence is ably supported by PW-9, investigating officer. It is also pertinent to note here that as per Forensic Science Laboratory report the human blood was detected on the said weapon in chemical analysis.

27 Similarly as per CA report at Exh. 49, human blood was detected on the clothes of accused. We find that this circumstance was addressed to accused while recording his statement under Section 313 of Cr.P.C. but appellant-accused failed to give any explanation.

28 In connection with the above, we have already noted that one cap of the uniform with monogram 'S' and whistle were also found on the spot. These articles were also stained with blood but again there is no explanation offered by the appellant-accused. In our considered opinion, the learned trial Court has properly taken into consideration all these circumstances in proper perspective and therefore, no fault can be

found with the approach of the learned trial Court.

29 In the light of above discussion, we find no grounds to interfere with the order of conviction and sentence recorded by the learned trial Court. The present Appeal, therefore, deserves dismissal and accordingly is dismissed, confirming the conviction and sentence awarded vide judgment made in Sessions Case No. 631 of 2010, dated 20th April, 2012, by the learned Additional Sessions Judge, Pune.

30 In view of dismissal of the Criminal Appeal, pending Applications, if any, do not survive and same stand rejected.

(V. G. BISHT,J.)

(PRASANNA.B.VARALE, J.)