

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 515 OF 2010**

Khusal @ Anant Chindu Bhunde	)	
Age : 36 years, Occ : Service,	)	
Resident at : Bavdhan Budruk,	)	
Tal : Mulshi, Dist. Pune,	)	
(Presently lodged at Yerawad	)	
Central Jail, Pune)	)	Appellant (Ori. Accused No.1)
Versus		
The State of Maharashtra	)	Respondent

Mr. Kishore Walanju, advocate for the appellant.

Mr. Arfan Sait, APP for the State.

**CORAM : RANJIT MORE &
SURENDRA P. TAVADE, JJ.**

DATE : 30th JANUARY, 2020.

ORAL JUDGMENT. :

1. The present appellant/original accused No.1 Khushal @ Anant Chindhu Bhunde along with accused No.2 Vithal Nivrutti Kurpe came to be charged for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC"). By the impugned judgment and order dated 7th May, 2010, passed by learned Additional Sessions Judge, Pune in Sessions Case No. 383 of 2007, the present

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appellant/accused No.1 was convicted for offence punishable under Section 302 read with Section 34 of the IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- and in default of payment of fine, he was directed to suffer Rigorous Imprisonment for six months. So far as original accused No.2- Vithal Nivrutti Kurpe is concerned, he came to be acquitted of the charge levelled against him.

2. The prosecution case, in brief, is as follows:

The first informant- PW No.1 - Bapu Maruti Bandal runs a business of selling vegetables. Deceased – Subhash Somaji Bandal and Pandurang Somaji Bandal are the relatives of the first informant and they had dispute over immovable property with their cousin brother – Raju Bhagwan Bandal. The prosecution case further proceeds that the present appellant was mediating the dispute between deceased Subash and Raju. However, the appellant could not settle the matter and, therefore, he used to spit upon seeing deceased Subhash. Raju and the present appellant were friends as they were Chairman and Director respectively in one and the same organisation.

On 13th November, 2006, deceased Subhash came at the home of the complainant Bapu at about 10.00 to 10.30 hours in the morning and both of them took tea. Then Subhash left his motorcycle for servicing and at about 12.00 noon again came at home of the complainant - Bapu. At

the relevant time, Subhash was standing in front of Space Care Workshop and nearer to barbed wire fencing of Krushna Shanti Residency. In another 10 to 15 minutes, the present appellant came rushing on red coloured motorcycle at the site where deceased Subhash was present and another person wearing helmet was a pillion rider. The present appellant – Khushal raised quarrel with deceased Subhash on account of land dispute and when exchange of words were going on, he and the person wearing helmet assaulted deceased Subhash with weapon like gupti and as a result Subhash fell down.

On receiving report, FIR No.194 of 2006 came to be registered at Hinjewadi Police Station, Pune. The Investigating Officer prepared inquest panchanama of the dead body of deceased Subhash and also seized clothes of the deceased and recorded the statements of the witnesses and arrested the accused. During investigation, the Investigating Officer also seized the motorcycle, helmet as well as the clothes of the accused and forwarded the seized property for chemical analyzation. During investigation, a weapon viz. gupti was recovered from the present appellant under Section 27 of the Indian Evidence Act. After completion of investigation, charge-sheet was filed before learned magistrate and as the offence under Section 302 of the IPC is exclusively triable by the Sessions Court, learned magistrate committed the matter for further trial to the Sessions Court at Pune.

As stated above, the present applicant along with accused No.2 were charged for offence punishable under Section 302 read with Section 34 of the IPC then pleaded not guilty of the charge. The prosecution, in order to prove their case, examined 10 witnesses including 3 eye witnesses, medical officer, investigating officer and pancha witness.

Learned Sessions Judge, after going through the evidence and hearing learned counsel appearing for the respective parties, came to the conclusion that prosecution proved that the present appellant committed murder of deceased Subhash and consequently convicted him under Section 302 read with Section 34 of the IPC. The original accused No.2, however, got benefit of doubt and he was acquitted.

3. PW No.1 – Bapu Maruti Bandal, PW No.2 – Pandurang Somaji Bandal and PW No.3 – Vikas Ramchandra Bandal are the eye witnesses of the incident in question. PW No.1 – Bapu and PW No.3 - Vikas, however, have not supported the prosecution case and, therefore, their evidence is rightly not considered by learned Sessions Judge. PW No.2 – Pandurang who is another eye witness has deposed that deceased Subhash was his real brother and they were residing together. One Raju Bandal who is his cousin brother also resided at Bavdhan. There was dispute over immovable property between deceased Subhash and Raju Bandal. PW No.2 - Pandurang further testified that Raju Bandal and the

present appellant were friends as they were working in same organisation in their capacity as Chairman and Director respectively. The present appellant was intervening in the dispute between deceased Subhash and Raju Bandal. PW No.2 - Pandurang further deposed that the appellant could not settle the dispute between deceased Subhash and Raju and, therefore, he used to spit every time he saw deceased Subhash.

4. On the date of the incident i.e. on 13th November, 2006, PW No.2 - Pandurang had been to Floor Mill at about 12.00 noon. He deposed that since there was some time for his turn to come up at the Floor Mill, he came out and stood on the road. At that time he saw scuffling between deceased Subhash on one side and the appellant/accused No.1 and a person wearing helmet on the other side. He also deposed that his brother- Subhash fell down and then the present appellant assaulted him by sword stick. PW No.2-Pandurang then raised shouts and went towards deceased Subhash but the present appellant and another person accompanying him went away. PW No.2 – Pandurang then sent Bapu and Vikas Bandal at the Police Station to file report and sent deceased Subhash at Sassoon General Hospital, Pune. In the hospital, the Doctor declared Subhash as dead.

5. The aforesaid evidence of PW No.2 - Pandurang is supported by PW No.5 – Suryakant Pukharaj Oza, though he is not an eye witness

to the incident in question. PW No. 5 Suryakant has deposed that he used to run floor mill by name "Suryakant Floor Mill" and the said mill is situated near Krushna Shanti Residency, Bavdhan, Pune. He has stated that since last 28 years, PW No.2 - Pandurang used to come at his floor mill for grinding grain. He deposed that on 13th November, 2006 at around 12.00 noon, PW No.2 – Pandurang came at his floor mill for grinding grain. However, since other customers were already there, PW. No.5 - Suryakant told PW No.2 – Pandurang that it will take some time for his turn to come and, therefore, PW No.2 – Pandurang went to stand outside the mill waiting for his turn to come and at that time he heard shouts and hence turned towards that direction. PW.No.5 – Suryakant then learnt about the incident in question. The fact that PW No.2 – Pandurang had gone to the floor mill of PW No.5 - Suryakant and he was waiting for his turn, however, on hearing shouts/cries, he rushed to the scene of offence corroborates the evidence of PW No.2 – Pandurang to the effect that PW No.2 had come to the floor mill of PW No.5 for grinding grain and he was waiting outside and after hearing shouts/cries, he rushed to the place of incident.

6. The prosecution has examined Dr. Milind Sharad Wable as PW No.6. PW No.6 conducted postmortem of the deceased and found about 21 external injuries on the body of the deceased. He also found 7 internal injuries. He has testified that all the injuries mentioned in the

postmortem report are ante mortem and recent. He has also stated and certified that external injury Nos.7 and 9 viz. oblique stab wound and vertical stab wound were sufficient to cause death in ordinary course of nature individually, collectively and associated with other injuries. He deposed that the cause of death, in his opinion, was traumatic and haemorrhagic shock as a result of stab injuries. He lastly testified that the injuries under reference can be possibly be caused through the knife seized in the matter.

7. The prosecution examined PW No.8 – Kisan More to prove the panchanama at “Exhibit – 43”, under which, gupti/sword stick was recovered under Section 27 of the Indian Evidence Act at the instance of the present appellant. It is true that no blood stains were found on this weapon. However, PW No.6- Dr. Milind Sharad Wable has stated that the injuries sustained by the deceased are possible to have caused by use of weapon like sword stick at “Exhibit – 43”. The clothes of the present appellant were seized under seizure panchanama at “Exhibit-57”. The prosecution examined pancha witness Bhagwat Krishna Raut. However, he has turned hostile. The panchanama at “Exhibit-57”, however, got proved through Investigating Officer – PW No.9. The clothes of the appellant were sent for chemical analyzation. The chemical analyzer has given report and the same is at “Exhibit – 71”. The same is proved through Investigating Officer. The report of the chemical analyzer coupled

with deposition of the Investigating Officer do show that the full pant seized from the person of the present appellant contained blood stains belonging blood group B. The prosecution has successfully brought on record that the blood group of the deceased was also B.

8. If the ocular evidence in the form of eye witness- PW No.2- Pandurang which corroborates with PW No.5 - is considered along with other evidence viz. recovery of knife at the instance of the appellant, recovery of clothes with blood stains belonging to blood group similar to that of the deceased, then, the only conclusion that can be arrived at is that the appellant himself has committed the offence. Learned Session Judge, Pune, has considered the evidence on record and convicted the appellant.

9. Having gone through the evidence on record as well as the impugned judgment and order and having considered the rival submissions, we do not find any error in the impugned judgment and order. The appeal is without any merits and the same is, accordingly, dismissed.

[SURENDRA P. TAVADE, J.]

[RANJIT MORE, J.]