

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 88 OF 2013

1. Prabhakar @ Parbat Deoram Achat

Age : 52 years, Occ. : Farmer

2. Sudam Prabhakar Achat

Age : 28 years, Occ. : Farmer

R/o. Sitane, Tal. Malegaon,

Dist. : Nashik

... Appellants

(Original Accused Nos.1 & 2)

V/s.

The State of Maharashtra

Taluka Police Station, Malegaon,

Tal. Malegaon, Dist. : Nashik

... Respondent

(Orig. Complainant)

Mr. M.N. Sandhyanshiv for the Appellants

Ms. M.M. Deshmukh, APP for the Respondent – State

**CORAM : NITIN JAMDAR &
C. V. BHADANG, JJ.**

DATE : 10 AUGUST 2021

JUDGMENT (Per Nitin Jamdar, J.)

The Appellants-Accused are convicted by the learned Sessions Judge, Malegaon, by the judgment and order dated 5 December 2012 under Section 302 read with 34 and Section 324 read with 34 of the Indian Penal Code and are sentenced to undergo imprisonment for life.

2. The prosecution case, in short, is as follows: Bapu Motiram Achat and the Appellants are residents of Sitane, Taluka Malegaon, District Nashik. Appellant No.2 is the son of Appellant No.1. Motiram Achat was the brother of Appellant No.1 and paternal uncle of Appellant No.2. Their agricultural fields were situated adjacent to each other with a common boundary and a common well. On 15 July 2009, when complainant Bapu had gone to his field, the Appellant No.2 accosted and abused him and told him not to use the common boundary (*bundh*) to operate the electric pump on the well. The complainant returned home and narrated this to his parents. All of them went to the field at around 12 noon. When the Appellant No.2 was asked an explanation as to why he was obstructing the complainant, the Appellants became

aggressive. Appellant No.1 armed with an axe and the Appellant No.2 with stick assaulted deceased Motiram and the complainant. They sustained injuries. Persons working in the nearby field took the injured to the Government Hospital, Malegaon. The report of the complainant was recorded at 4.15 p.m. On the same day, Crime No.171 of 2009 was registered under Sections 323, 326, 504 and 506, read with 34 of the Indian Penal Code. Motiram was shifted to the Government Hospital Dhule. However, he expired on the same night. Section 302 of the Indian Penal Code was added.

3. The Investigating Officer prepared spot panchanama Exhibit 26. The Appellant No.2 was arrested on the next date. Inquest panchanama Exhibit 20 was drawn. Clothes of the deceased were seized under panchanama Exhibit 21. Post mortem was carried out, and the report Exhibit 15 was prepared. Appellant No.1 gave a memorandum statement and produced an axe which was recorded as per panchanama Exhibit 12. At the request of the Investigating Officer, evidence of eyewitnesses were recorded under Section 164 of the Criminal Procedure Code by the Judicial Magistrate. Charge-sheet was filed, and the case was committed to the Court of Sessions. Charge was framed against the Appellants. The learned Sessions Judge, after considering the evidence on record and the arguments advanced, concluded that the death of deceased Motiram was homicidal and that the Appellants had committed the murder of

Motiram on 15 July 2009. The Appellants were convicted by the learned Sessions Judge, Malegaon, by the judgment and order dated 5 December 2012 under Section 302 read with 34 and Section 324 read with 34 of the Indian Penal Code and were sentenced to undergo imprisonment for life.

4. Prosecution examined eight witnesses, i.e. PW-1 Chhagan Krishna Achat (Exhibit 9), PW-2-Bharat Popat Wagh (Exhibit 10), PW-3-Megha Dattatraya Lavare (Exhibit 13), PW-4-Dr. Ajit Raghunath Patil (Exhibit 14), PW-5 Sahebrao Manikrao Kardekar (Exhibit 16), PW-6-Nana Murlidhar Shendge (Exhibit 19), PW-7-Sojabai Motiram Achat (Exhibit 22) and PW-8-Mahendra Damodhar Ahire (Exhibit 25).

5. As regards the homicidal death, inquest panchanama Exhibit 20 is proved by the evidence of PW-6-Nana Shendge. He deposed that he had gone to the Civil Hospital, Dhule where the dead body of deceased Motiram was shown, and panchanama was prepared. Nothing has been brought on record to discredit his version. Further PW-8-Ahire also deposed regarding the preparation of the inquest panchanama, and that body was sent for post mortem. The Medical Officer PW-4- Dr Ajit Patil, was examined by the prosecution. He deposed that he had carried out post mortem on the body of the deceased, and he found the following injuries:

1. A sutured wound on vertex. Y shaped, 4.5 cm in length. On opening sutures, margins were found to be irregular and the wound was bone-deep.
2. Abraded contusion on right arm laterally upper 1/3rd, 1.5 cm. x 1 cm. reddish in colour.
3. C. L. W. on first distal phalanx of left index finger, 0.08 cm x 0.5 cm x bone -deep.

In my opinion, all those injuries are possible impact of hard blunt and moderately heavy objects.

There was fracture of humerus right side upper 1/3rd

All the external injuries were ante -mortem in nature and within 24 hrs. of death. On the internal examination he noticed

1. Hematoma under both parietal and right temporal regions of scalp.
2. There was a fracture of the right temporal and right parietal bone.
3. Extradural hematoma in right temporo-parietal region, 8.3 cm. x 5.5 cm. x 2.5 cm.

He reported that cerebral oedema was present and diffused subarachnoid haemorrhage was present.

6. The Medical Officer deposed that the injuries were possible by means of an axe (Article A) and stick (Article B). He opined that the injuries were possible because of meeting with hard,

blunt and moderately heavy objects.

7. The Appellants took the defence that the deceased Motiram suffered the injuries due to a fall. Spot panchanama shows that bloodstains were seen on the grass. There is no suggestion to the Medical officer that the injury was because of a fall on tin sheets as the place had tin sheets. In view of the medical evidence, it will have to be held that the death of Motiram was homicidal and that it is proved by the prosecution that it occurred on the spot as indicated.

8. The prosecution has examined three eyewitnesses. PW-1-Chhagan, PW-3-Megha and PW-7-Sojabai. PW-3-Megha is the granddaughter of deceased Motiram, and PW-7- Sojabai is the wife of deceased Motiram, and PW-1-Chhagan is the nephew of deceased Motiram.

9. Complainant Bapu was also assaulted. His statement was recorded by the police as regards the death of Bapu. The prosecution did not collect any document relating to his death. The learned Sessions Judge observed that Bapu expired two months after the incident, and since nothing was brought on record regarding the cause of death, his statement could not be taken as a dying declaration and therefore even though Bapu expired after the incident; the conviction was recorded for voluntarily causing hurt to

Bapu under Section 324 read with 34 of the Indian Penal Code.

10. As regards the eyewitnesses, the learned Counsel for the Appellants submitted that their evidence is not trustworthy. He submitted that the role of the Appellant No.2 was that he used only a stick, and there was a sudden quarrel which took place, and in that quarrel, the incident took place. He submitted that the injuries that the Appellant No.2 inflicted were not fatal injuries.

11. The learned APP submitted that the evidence of eyewitnesses is clear and cogent, and there is no reason to disbelieve the same. The learned APP submitted that the Appellants used the axe and stick to give a blow on the back of the head. Their roles cannot be separated and Section 34 of the Indian Penal Code is also made applicable. The learned APP submitted that the Appellants were the aggressors.

12. The evidence of PW-1-Chhagan, PW-3-Megha and PW-7-Sojabai is consistent. PW-1-Chhagan Krishna Achat, the nephew of the deceased and the Appellant No.1 deposed that he had gone to the field with his mother. He saw a quarrel going on between Motiram and the Appellants, and when he ran towards them, he saw Motiram was lying on the ground. Bapu was standing and Appellant No.1 assaulting Bapu with the backside of an axe on his back and head. The Appellant No.2 was armed with a stick. He had caught

hold of the hands of Motiram. Later on, he learnt that the quarrel was regarding common *bundh*. PW-3 Megha deposed that at 11.30 a.m. on 15 July 2009, the Appellant No.2 abused Bapu and warned him not to go to the common *bundh*. When Bapu came home and told his parents she was there and she also went along with her grandparents to the field and witnessed the incident wherein the Appellant No.1 assaulted Motiram with an axe and the Appellant No.2 with a stick on the backside of his head. Appellant Nos.1 and 2 also assaulted Bapu with an axe and also assaulted with a stick. PW-7-Sojabai deposed that her son Bapu came from the field on that day and told that the Appellant No.2 had abused and warned him, and thereafter they all had gone to the field wherein the Appellants assaulted the deceased Bapu with an axe and a stick. Thereafter the Appellant No.2 dragged Bapu and assaulted him on his right hand.

13. So far as the evidence of these eyewitnesses is concerned, no material contradictions or omissions have been pointed out in their evidence or cross-examination. It is sought to be argued by the Appellants that PW-1-Chhagan could not have seen the incident as the field was far away. To a query that he could not have seen the incident, this witness clarified that he had witnessed the quarrel from a particular spot from which the field of the accused can be seen. As regards the presence of this witness, nothing has been brought on record to demonstrate that he could not have seen the incident. As

regards the evidence of PW-3-Megha, the learned Counsel for the Appellants submitted that she has not deposed before the police that the Appellant has assaulted Bapu with kicks and then axe was used. She had also not stated that Motiram, after receiving a head injury, grey matter from Motiram's head was visible. He submitted that PW-3-Megha also did not depose that PW-1-Chhagan caught the hands of accused No.1. According to us there are no material contradictions. PW-3-Megha was 17 years old when she was deposed. Regarding assault by the Appellants with a stick and axe are concerned, her evidence is consistent and corroborates the evidence of PW-7-Sojabai. PW-7-Sojabai's evidence is sought to be challenged by the Appellants on the ground that she had not stated before the police that the Appellant No.2 had assaulted the deceased on his back and that Appellant No.1 was inside the house, and he assaulted the deceased with stone. The witnesses cannot be expected to depose with mathematical accuracy. None of these contradictions can cast doubt on the consistent version of the prosecution witnesses. The contention of the learned Counsel for the Appellants that independent witnesses were not examined does not cast doubt on the prosecution's case. PW-1-Chhagan was the nephew of Accused No.1 as well as deceased. Nothing is brought on record as to why he should depose falsely. The evidence that the Appellants abused Bapu and assaulted him using stick and axe is consistent and trustworthy. The injuries on the dead body also correspond to the ocular

evidence.

14. As regards the contention that the Appellant No.2 had used only a stick and did not inflict a fatal blow, the evidence on record shows that he had hit the deceased on the back of his head with a stick and continued to assault the deceased. His action was in tandem with the assault by Appellant No.1, and Section 34 of the IPC was applied and was squarely attracted and therefore, the argument that the Appellant No.2 used only a stick and therefore his role is different cannot be accepted.

15. As regards the argument on behalf of the Appellants that the incident took place at the spur of the moment and there was no intention is concerned, the earlier incident cannot be lost sight of. The Appellant No.2 abused and obstructed deceased Bapu, and when Bapu and Motiram had gone to ask for an explanation for the same, they were assaulted with stick and axe by the Appellants. This was not a case of any sudden quarrel or sudden provocation. It is the Appellant No.2 who was the aggressor and instigated the quarrel. The Appellants were armed with an axe and stick, and in the manner in which assault took place, there was a clear intention and knowledge coupled with the earlier incident where there was boundary dispute. The learned Counsel for the Appellants relied upon the decision of the Supreme Court in decision of *Jagrup*

*Singh vs. State of Haryana*¹ . In the case of *Jagrup Singh*, something had happened at the spur of the moment, resulting in the accused giving a single blow, and there was evidence that their relationship was otherwise cordial. This decision is not applicable. The learned APP is right in contending that the present case is not of any grave and sudden provocation nor it can be said that there was no intention. The injuries on the dead body show that an axe and a stick were used. Not only the deceased Motiram expired, but Bapu, on receiving injuries, shortly died thereafter.

16. The learned Counsel for the Appellants then submitted that the panch to the recovery panchanama had not supported the prosecution, and the recovery is not proved. In the cross-examination, Panch witness PW-2-Bharat accepted that he had signed the panchanama. Even otherwise, assuming the recovery is not proved by the prosecution, once ocular evidence is clear and cogent and corresponds with the evidence of the Medical Officer, the absence of recovery, which is only a piece of corroborative evidence, is not of relevance.

17. To conclude, therefore, the prosecution has proved the case that the Appellants committed murder of Motiram on 15 July 2009 and had assaulted and caused hurt to Bapu and therefore conviction recorded under Section 302 read with Section 34 and

1 1981 AIR (SC) 1552

Section 324 read with Section 34, is correct and proper.

18. The appeal is accordingly dismissed.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)

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