

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 482 OF 2012

Anant Ramchandra Khandalkar	}	
Aged 45 years	}	
Add: Convict No. C/8669	}	Appellant
Central Prison, Nashik Road, Nashik	}	(orig. accused)

Versus

The State of Maharashtra	}	Respondent
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Ms. Devyani Kulkarni appointed advocate for the appellant.
Ms. Geeta Mulekar – APP for the State.

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

RESERVED ON : SEPTEMBER 22, 2021.
PRONOUNCED ON : DECEMBER 9, 2021.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The appellant herein seeks exception to the judgment and order dated 31st January 2011 passed by the Additional Sessions Judge, Mangaon, District-Raigad in Sessions Case No. 21 of 2010, by which the appellant has been convicted for the offence punishable under section 302 of Indian Penal Code and is sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs. 1000/- (Rupees

One Thousand Only), in default of payment of fine, to undergo Rigorous Imprisonment for one year.

2. Such of the facts necessary for the decision of this appeal is as follows:-

a) On 11th February 2010, one Dattatraya Anjarlekar lodged a report at the police station alleging therein that the appellant/accused stays in front of his house. He is a Carpenter by profession. There used to be intermittent quarrels between the spouses and it was the complainant who used to pacify them. That the brothers of the accused were aware of the intermittent quarrels between the spouses. That the accused was addicted to alcohol and that was the cause of the quarrel.

b) That on 11th February 2010 at about 3.00 a.m. Subhash, the brother of the accused approached the complainant and informed him that the accused has assaulted his wife and that she had sustained a bleeding injury and is unconscious. The complainant rushed to the house of the accused. The wife of the accused was lying in a supine position. She had sustained a bleeding injury on her head. Upon enquiry, the accused-Anant informed the complainant that his wife had not served him dinner at night and therefore, he assaulted her with a wooden log. The complainant had taken the injured to the police station. The accused had also accompanied the injured and complainant

to the police station. The brothers of the accused had accompanied them. She was referred to the Civil Hospital. The Doctor opined that the injured has been assaulted with a sharp weapon and that she should be taken to Mangaon Civil Hospital. Hence, she was taken to Mangaon. She succumbed to the injuries in transit hence she was declared dead on admission and according to the doctor the injury was caused by a sharp weapon.

3. On the basis of the report, Crime No. 5 of 2010 was registered at Mhasala Police Station for the offence punishable under Section 302 of Indian Penal Code. At the trial, the prosecution has examined 8 witnesses to bring home the guilt of the accused.

4. The prosecution has placed implicit reliance upon the evidence of three witnesses. PW.3, the complainant, PW. 4, Ganesh Khandalkar, the son of the present appellant. PW.5, Santosh Jadhav, the panch for spot panchnama. PW.6, Anant Pawar, the panch for recovery of weapon. PW.7, Dr. Sumer Shirdhar, who has performed the autopsy on the dead body of deceased- Anita and PW.8, IO, Prakash Birajdar.

5. The evidence of PW.3, Dattatraya Anjarlekar, the complainant would show that he was informed by the brother of the accused at about 3.00 a.m. that his brother had assaulted his sister-in-law and that she was lying in a pool of blood. Upon enquiry, the accused had disclosed that he had assaulted his wife with a wooden log. That when the injured was being taken to the police station in the

Auto-rickshaw of the son of PW.3. he was accompanied by the accused also to the police station. They had taken the requisition letter from the Police. It is pertinent to note that the evidence of PW.3 further goes to show that the accused was detained in the police station. Thereafter, PW.3 had lodged the report at the police station. On the basis of which, the law was set in motion.

6. The complainant has further deposed to the extent that there was an extra judicial confession before him by the accused that since his wife Anita had not provided food to him in the previous night, there was a quarrel between the spouses.

7. The prosecution has adduced the evidence of PW.4-Ganesh, son of the accused and the deceased who was sleeping in the same room at the the time of incident.

8. The deposition of PW.4 would show that in the intervening night of 10th February 2010 and 11th February 2010 at about 3.00 a.m. he had heard his mother shouting as “aai ga mele”. Upon hearing the cry, he had switched on his Torch and looked at his mother and noticed that she had sustained a head injury and blood was oozing from the injury. He saw his father seated next to his mother and was trembling. PW.4 therefore, rushed to his uncle who was residing in the adjacent room under the same roof and informed him that his father had assaulted his mother with a wooden log due to which she has sustained a bleeding injury. In his presence the accused had informed the complainant– Anjarlekar that since his wife had not served him food at night he assaulted her with a wooden plank and thereafter they

had been to the hospital. He has further volunteered that they had a sickle at home for being used for agricultural operation and that he had used the same for domestic work also.

9. It is elicited in the cross examination of PW.4 that when his uncle Subhash had questioned him about his act the accused had informed Subhash that he had not done anything. It is also admitted that the accused was maintaining his family out of earnings from his work as a carpenter but there used to be quarrels on flimsy ground and the only bone of contention was that the accused was addicted to alcohol and used to return home under the influence of alcohol.

10. It is further admitted that on the day of incident the accused was under the influence of alcohol. There is recovery of a sickle at the instance of the accused under section 27 of the Indian Evidence Act.

11. The evidence of PW.7. Dr. Sumer Shirdhar indicates that the injured was declared dead on admission. PW.7 was attached to Sub Divisional Hospital, Mangaon. The injured was referred by Primary Health Centre, Mhasale and the injured has died on the way.

12. PW.7 had noticed 1) incise wound middle of vertex horizontal cutting of skull bone, brain matter spread out, it was 7 cm in length, depth was upto brain. 2) two small injuries like laceration, found on left side of the chest. The postmortem report is at 'Exhibit-39'. Cause of death was "*hemorrhagic shock due to head injury*". The opinion of the Doctor is that the injury cause on the head is possible

due to infliction of sickle with great force. According to him, there was excessive bleeding from the head injury, during the time spent for taking the injured to the police station to set the law in motion. It can be said that injured did not get immediate medical aid.

13. PW.8, Prakash Birajdar happens to be I.O. According to him, the sickle was recovered at the instance of the accused house from below a heap of wood and that the said sickle was stained with blood.

14. It is the case of the prosecution that it was PW.4 who was the first person to see his mother injured and his father sitting next to her. Thereafter, PW.4 had called upon his uncle to whom the accused had candidly stated that he had not done anything. Moreover, the conduct of the accused needs to be taken into consideration after the incident. The accused had accompanied his injured wife and neighbour along with his brother to the police station. On the basis of the statement of the neighbour, the police had detained the accused. That the accused had allegedly disclosed that he had assaulted his wife with a wooden plank. However, the investigating agency has recovered a sickle from the accused under section 27 of the Indian Evidence Act. In fact, a wooden plank and a sickle are two different things.

15. The sequence as brought on record by the prosecution is as follows:

- a) PW.4 woke up at 3.00a.m. on hearing the cries of his mother.

b) Without asking any question to his father. PW.4 rushes to his uncle's room and informs him that his father has assaulted his mother.

c) Subhash, the elder brother of the accused without seeking any answer from his own brother rushes to the house of his neighbour.

16. Upon enquiry by the neighbour the accused discloses that he assaulted his wife with a wooden log. Soon thereafter the accused accompanies his neighbour to the police station. The police sends a requisition letter to the hospital for examining the injured. Unfortunately, the injured succumbed to the injuries on her way to the hospital. The question is whether the weapon recovered is the weapon of assault.

17. It appears that the appellant was asked about the wooden log, in question no. 7, in his statement under section 313 of Cr.P.C. whereas a sickle was recovered after his arrest. Accused had disclosed from the beginning that he had assaulted Anita with a wooden log but what is recovered is a sickle.

18. In these circumstances, it would be appropriate to rely upon the judgment of the Hon'ble Apex Court in the case of **Nar Singh vs. State of Haryana**¹ in which the Apex Court has held as follows:-

"It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as

1 (2015) 1 SCC 496

to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not *ipso facto* vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration”.

19. In the present case the disclosure by the accused is treated as extra judicial confession made by the accused to his brother Subhash and his neighbour Anjarlekar. Extra judicial confession in itself is a weak piece of evidence. In any case, the extra judicial confession is not corroborated by any material. It is a cardinal principle that for an extra-judicial confession to be the basis of conviction it should not suffer from any discrepancies or inherent improbabilities. In the present case the extra-judicial confession is that the accused assaulted with a wooden plank, but the injury sustained is by a sharp weapon, as opined by the doctor and pursuant thereto there is a recovery of a sickle. This is inherent improbability in the extra-judicial confession.

20. Looking at the sequence of events, it would be difficult to hold that after the assault, the accused would have time to conceal the sickle since he had accompanied his wife to the police station. The prosecution has to travel a long distance between “may be” and “must be”.

21. In view of the above mentioned circumstances, the appellant herein deserves to be acquitted by extending to him the benefit of doubt. Hence we pass the following order:-

ORDER

- i) The appeal is allowed.
- ii) The conviction and sentence imposed vide Judgment and order dated 31st January 2011 passed by the Additional Sessions Judge, Mangaon, District-Raigad in Sessions Case No. 21 of 2010 is hereby quashed and set aside.
- iii) The appellant is acquitted of all the charges levelled against him.
- iv) The appellant be released forthwith, if not required in any other case.
- v) Fine be refunded, if already paid.
- vi) The appeal is accordingly disposed of.

22. We cannot part with the judgment without recording appreciation of learned advocate, Ms. Devyani Kulkarni was appointed in the present matter to espouse the cause of the appellant as it

happens to be an appeal filed by the appellant, who is in custody. She has put in her best efforts to espouse the cause of the appellant. Hence, her professional fees are quantified as per rules to be paid to her by High Court Legal Aid Services Committee, Mumbai.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)