

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.577 OF 2015

SANJAY KASHINATH KHOMANE)
Age – 30 years, Occupation – Labour)
Residing at Bhongawali, Taluka Bhor,)
District Pune)
(At present accused lodged in Yerwada)
Central Prison, Pune (Convict No.C-16950))...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)
(At the instance of Jejuri Police Station)
Vide C.R.No.116 of 2007))...RESPONDENT

Mr.Aniket Vagal, Advocate, for the Applicant.

Mr.S.S.Hulke, APP for the Respondent – State.

**CORAM : S. S. SHINDE &
V. G. BISHT, JJ.**

DATE : 6th OCTOBER 2021

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

1 The present appeal has been preferred against the judgment and order of conviction and sentence dated 29th December 2014 passed by the learned Additional Sessions Judge,

Pune, in Sessions Case No.436 of 2012 wherein the learned trial Court was pleased to convict the appellant under Section 302 and 506(II) of the Indian Penal Code (IPC) and sentenced him to suffer life imprisonment and to pay fine of Rs.2,000/-, in default to suffer further rigorous imprisonment for two months and further sentenced him to suffer rigorous imprisonment for six months and pay fine of Rs.500/-, in default to suffer rigorous imprisonment for one month. However, the learned trial Court was pleased to acquit the appellant of offences punishable under Section 323 IPC. The substantive sentences, however, are directed to run concurrently.

2 The prosecution case, in short, is as under :

Accused Sanjay Kashinath Khomane is neighbour of the informant. Anil Ramchandra Khomane is his real brother. The prosecution alleges that accused used to suspect on the character of his mother, namely, Sitabai Kashinath Khomane and used to tell that she was having illicit relations with Abaso Chavan i.e. father of the informant. On 17th October 2007 at about 8.00

a.m., the accused quarreled with his mother on the same ground and also beat her. Even the father of the accused told the informant and others that there are no such relations as is alleged by the accused and also persuaded the accused not to defame his mother in the society. However, it is alleged, the accused threatened all that he would see them one by one.

3 The prosecution then alleges that on the same day at about 2.00 p.m. while the informant was standing in front of his house, the accused armed with an axe came and started shouting that now he would see all one by one and started beating the informant. When the informant's brother, namely, Sagar and father Abaso Chavan (deceased) came to the rescue of informant, accused gave a blow of axe on the neck of the deceased by asking him as to why he was keeping physical relations with his mother. The deceased was immediately rushed to Primary Health Center, Valha. It appears that during the course of treatment the deceased succumbed to the injuries.

4 The informant later on lodged the First Information Report (FIR) with Police Station Jejuri on the basis of which Crime No.116 of 2007 for offences punishable under Section 307, 323 and 506 IPC came to be registered.

5 Investigation was taken up by PW7 Bandopant Anna Kondubhairi by visiting the spot of incident and drawing Spot Panchnama (Exh. 23). PW7 Investigating Officer also seized clothes of the deceased stained with blood and drew Seizure Panchnama Exh. 18. He also recorded the statement of witnesses. Thereafter, he forwarded all the seized articles and samples to the Forensic Science Laboratory along with his report. It is further seen from the record that since the accused was absconding PW6 Anil Baburao Shewale, Investigating Officer, forwarded the charge-sheet as per Section 299 of the Code of Criminal Procedure (Cr.P.C.).

6 To substantiate the Charge against the appellant, the prosecution has examined seven witnesses and exhibited number

of documents. The appellant was questioned under Section 313 of the Cr.P.C. about the incriminating evidence and circumstances and the appellant denied all of them as false and also expressed ignorance. According to him a false case is filed against him.

7 Mr.Aniket Vagal, learned counsel for the appellant, vehemently submits that there is no cogent, reliable and corroborative evidence against the appellant and despite that the learned trial Court wrongly convicted the accused. Moreover, according to the learned counsel, even if it is assumed that the alleged incident in question took place but then the said incident took place at a spur of moment and therefore, it was wrong on the part of the learned trial Court to convict the appellant for the offence punishable under Section 302 IPC. For all these reasons, the appeal deserves to be allowed, argued learned counsel.

8 Mr.Hulke, learned APP for the State, on the other hand, supports the impugned judgment and order. According to the learned APP, the learned trial Court has properly appreciated

the evidence led by the prosecution. The conviction being legal and proper, no interference is required at the hands of this Court.

9 Before looking into the evidence of material witnesses, we propose to refer to the postmortem report proved in evidence by PW5 Dr.Amol Balwant Shinde (Exh. 28). PW5 Dr.Amol Shinde states in his evidence that since July 2009 he is attached to BJ Medical College and Sassoon General Hospital as Assistant Professor in Forensic Medicine Department. Dr.M.S.Wable was the Professor and Head of the department. He worked with him. According to him, Dr.Wabled is no more. However, he is acquainted with his handwriting and signature.

10 According to PW5 on 18th October 2007 dead body of Abaso Chavan was brought to mortuary in between 8.30 to 9.30 a.m. Dr.Wable conducted postmortem on the dead body. He noticed three external injuries at column no.17 which are as under :

“(1) Chopped wound left side of neck 3 cm below angle of mandible measuring 8 x 6 cms. Angles and margins clean cut underlying soft tissues including carotid artery, jugular veins show clean cut injury, transverse process of C-4 Vertebra shows clean cut fracture.

(2) linear abrasion. On tip of left shoulder 3 x 0.5 cms.

(3) punctured marks left cubital fossa.”

His evidence further shows that Dr.Wable noticed following internal injury :

“(1) Injuries over larynx trachea and bronchia as mentioned in column no. 17 no.1.”

It is his further evidence that Injury No.1 in column no.17 corresponds to internal injuries which are sufficient to cause death in ordinary course of nature. The cause of death opined by Dr.Wable was death due to traumatic and haemorrhagic shock as a result of chopped wound. He then proved the signature of Dr.Wable at Exh. 29. He also opined that though Injury no.1 mentioned in column no.17 is possible by muddamal (Article

No.7), namely, axe, there is nothing in the cross-examination of this witness to the advantage of defence. Having regard to the nature of injuries found on the dead body of the deceased and the cause of death, we have no hesitation in our mind to hold that the deceased met a homicidal death.

11 Coming to the oral evidence adduced by the prosecution, the first witness in line is PW1 Sachin Abasaheb Chavan – informant (Exh. 19). PW1 states in his evidence that house of accused is opposite to his house and accused is residing with his mother Sitabai, father Kashinath and brother Anil. According to him, the accused used to suspect upon character of his mother Sitabai by saying to his mother that she was having illicit relations with his father (informant's father).

12 PW1 further states that on 17th October 2007, at about 8.00 a.m., a quarrel took place between accused and his mother Sitabai. The accused told his mother that “you have illicit relations with Abya Chavan.” The accused also beat his mother.

Thereafter, PW1, his brother and father went there. Even father of accused told him that there is no such illicit relation and advised him not to cause damage to their reputation. Still, the accused threatened them by saying that “I will see you and will kill you.” (तुम्च्या कडे बघुन् घेइन् व एका एकाला खलास् करिन्). However, they all neglected the threats.

13 It is his further evidence that on the same day, at about 2.00 p.m., while the informant was standing in front of his house, accused came out of his house with an axe in his hand and uttered the words “ये कुत्र्या आता एका एका कडे बघतोच्” and immediately started assaulting the informant. At that time, informant’s brother Sagar and father Abasaheb i.e. the deceased came near to them and they started to separate the quarrel. It is at that time accused told his father “are you keeping illicit relation with my mother” (माझ्या आई बरोबर शरिर् सम्बन्ध ठेवतो काय्) and inflicted blow of axe on the neck of his father due to which his father sustained grievous injury on his neck and

thereafter, they took his father to Primary Health Center, Valhe for treatment. However, the Doctor referred his father to Sassoon Hospital. Thereafter, he lodged report. The informant then proved his report at Exh. 20. PW1 then lastly states that after lodging the complaint, he went to place of incident along with police officers and police and panchas prepared Spot Panchnama. He then identified the axe (Article 1) before the Court which was used by accused, when shown to him.

14 If the contents of the FIR and the substantive evidence of PW1 informant are juxta posed, then it will be seen that there is due satisfactory corroboration. It is also clear from the evidence of informant that the accused, since beginning, had suspicion on his mother of her having illicit relation with the deceased. Even on the date of incident, in the morning, he quarreled on that count with his mother. Although his father and informant and his father also tried to persuade him and remove the suspicion from his mind, he was not ready to listen and rather threatened all of them that he would see them and also

will kill them one by one. Infact, the accused materialized his threats into action on the same day, when at about 2.00 p.m., he armed with an axe, after having made preparation in his mind, went to the house of the informant and started saying that now he will see his family members one by one. He did not stop there but started assaulting the informant. When informant's brother Sagar and father (deceased) intervened, accused turned to the deceased and questioned him if he is having illicit relation with his mother and immediately without waiting for an answer gave a blow of an axe on the neck of the deceased.

15 The chronology of the events clearly goes to show that the accused had made up his mind to kill the deceased and this he did so after having made preparation and giving a blow of an axe on the neck of the deceased. The learned counsel for the appellant is absolutely toeing a wrong line of argument that the whole incident took place in a spur of moment and therefore it cannot be said that the accused was not having intention to kill the deceased. We are not in agreement with the line of argument

adopted by the learned counsel for the accused and therefore, out-rightly reject it.

16 This is all about the examination-in-chief. From the cross-examination and more particularly the pattern of defence shown by the accused clearly goes to show that his presence at the place of occurrence is not at all disputed. A suggestion was given, which is denied by the informant, that informant and his family members assaulted accused by an axe and while assaulting accused, in scuffle the blow of axe hit on the neck of informant's father due to which his father sustained injury to his neck.

17 Then second suggestion, which is also termed as incorrect, that the informant and his family members entered into the house of the accused in order to beat him and in order to save himself, the accused inflicted blow of an axe to informant's father in a grave and sudden provocation. Now, these two suggestions are diametrically opposite and take a very damaging and contrasting defence. While the first suggestion proposes that

the deceased was injured in a scuffle, that too at the hands of family members of none other than informant, while in another suggestion the plea of self defence is taken, that too in a given grave and sudden provocation. What surprises us is that while recording Section 313 Cr.P.C. statement of the accused, he has nowhere offered these explanations/excuses in defence of the incriminating circumstances appearing against him in the evidence. Not a single word is uttered either in respect of self defence or that the deceased sustained fatal injuries on his neck at the hands of his own family members and not at the hands of the accused, as is alleged by the prosecution. Therefore, we hold that the testimony of informant alone is quite impeccable and pure and does not suffer from any infirmity of whatsoever nature.

18 Next witness is PW3 Gorakh Hausaba Chavan, real brother of the deceased. He states in his evidence (Exh. 24) that on 17th October 2007, while he was working in his field, his nephew Sachin came and informed that accused had beaten

Abasaheb (deceased) by an axe on his neck and Abasaheb was lying in a pool of blood. He, therefore, immediately rushed to the spot and found Abasaheb lying in a pool of blood having sustained injury on his neck and blood was oozing from his injury. It is his further evidence that when he asked him as to what had happened, the deceased told that accused assaulted him by an axe. Thereafter, he was taken to Government Hospital, Valha and from there to Sassoon Hospital. However, on the same day, his brother died.

19 From the examination-in-chief it is quite clear that when this witness reached on the spot, he found his younger brother in pool of blood having sustained injury on his neck. On being asked as to how he (deceased) had sustained injury, the deceased apprised him that it was accused Sanjay who had assaulted him by means of an axe. The cross-examination of this witness is also interesting and puts the defence in a bad light.

20 PW3 states in his evidence that when he asked Abasaheb as to why the accused had assaulted him, Abasaheb replied that accused blamed him by saying that he had illicit relation with mother of the accused. Thus, the reason is also coming to the fore behind the whole incident and has been all along the case of prosecution. This witness was also given a suggestion which is termed as incorrect. The suggestion is to the effect that deceased in fracas told accused that he has illicit relation with the mother of accused and that he can do anything and that is why in a heat of passion the accused inflicted blow of an axe on the neck of the deceased.

21 As already stated, this suggestion is denied by the witness, we, quite disturbingly note that this suggestion also goes against the suggestion given to PW1 informant in his cross-examination. By giving this suggestion to PW3, the defence has introduced an altogether a different story than what is suggested to PW1 informant. It seems to us that the accused is taking irrelevant defences, just for the sake of defences, without

assessing the seriousness of those defences and also as to how the defences, so taken, are damaging his own case. We need not attach much importance to these defences.

22 Thus, both the above noted eye witnesses have fully supported the case of prosecution and as also the complicity of the accused is beyond doubt in the offence.

23 PW2 Shankar Chimaji Madne (Exh. 22) has proved the Spot Panchnama at Exh. 23. There is nothing in his cross-examination.

24 PW4 Sunil Sripati Chavan states in his evidence (Exh. 25) that on 14th October 2011 he was called by police at Jejuri Police Station. Another panch, namely, Chandrakant was also called by police and accordingly he came. Accused Sanjay Kashinath Khomane was in the custody of police. Accused made voluntarily disclosure statement and stated that he had concealed the axe in his house at Village Bhongwali and that he would

produce the same. Accordingly, the disclosure statement was reduced into writing. He then proved the disclosure statement at Exh. 26.

25 It is his further evidence that after completion of recording of disclosure statement, the accused took him, another panch witness and police to his house from where he produced another axe having red colour stains on it. The said axe came to be seized under Seizure Panchnama. He then proved Seizure Panchnama at Exh. 27.

26 The disclosure statement of accused and the recovery of axe thereto is also supported by PW6 Anil Shewale (Exh. 32) Investigating Officer. There is nothing in their respective cross-examinations of the above said witness and therefore, the prosecution has also been able to prove recovery of axe at the instance of the accused which was used by him in the commission of offence.

27 Although no Chemical Analyzer's Report is forthcoming in respect of the weapon of offence i.e. axe used in the commission of offence, but that will not in any manner hit or dent the case of prosecution, in as much as, there is direct oral evidence of the prosecution witness, namely, PW1 and PW3 which we have found to be reliable and trustworthy.

28 In view of above, we hold that the prosecution has successfully established the guilt of accused beyond reasonable doubt. There is no illegality or perversity in the finding of guilt so recorded by the learned trial Court. We, therefore, do not find any reason to interfere with the finding of guilt and hence, we pass the following order :

ORDER

Appeal is dismissed.

(V. G. BISHT, J.)

(S. S. SHINDE, J.)