

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.1103 OF 2015**

Vyankat @ Vyankatesh Chanchayya Pinnam  
Age about 46 years, Occ. Service,  
R/at S.No.71, Balajinagar, Lane No.1,  
Ghorpadigaon, Pune. Appellant  
(and at present in judicial custody and lodged (Orig. Accused  
at Yerwada Central Prison, Pune) ... No.1)

V/s.

The State of Maharashtra ... Respondent

**WITH  
CRIMINAL APPEAL NO.680 OF 2015**

1. Ramanayya Chanchayya Pinnam @  
Rakesh Hukumchand Khokar  
Age: abt 39 years, Occu. Service,  
R/at : S.No.71, Balajinagar, Lane No.1,  
Ghorpadigaon, Pune.
2. Smt. Yangayya @ Yangamma  
Gurayya Battal  
Age : about 47 years, Occu.  
R/at : S. No.72, Gulmohar Park,  
Ghorpodigaon, Pune.  
(Presently in Yerwada Central Prison,  
Pune and Yerwada Women Prison, Pune  
respectively). Appellants  
(Orig. Accused  
... Nos.2 and 4)

V/s.

The State of Maharashtra ... Respondent

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Mr. Daulat G. Khamkar, Advocate for the Appellants in both the Appeals.

Ms. P.P. Shinde, APP for the Respondent – State in both the Appeals.  
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**CORAM : SMT. SADHANA S. JADHAV &  
N.R. BORKAR, JJ.**

**JUDGMENT RESERVED ON : 24<sup>th</sup> JUNE 2021.**

**JUDGMENT PRONOUNCED ON : 1<sup>st</sup> JULY 2021.**

**JUDGMENT : (Per Sadhana S. Jadhav, J.)**

1. The appellants herein are convicted for an offence punishable under section 302 r/w 34 of Indian Penal Code by the Additional Sessions Judge, Pune in Sessions Case No.790 of 2011 vide judgment and order dated 3<sup>rd</sup> June 2015 and sentenced to suffer imprisonment for life and shall pay fine of Rs.2,000/- each, i/d to pay fine to suffer imprisonment for one year. Accused no.1 – Vyankat @ Vyankatesh Chanchayya Pinnam is also convicted under section 235(2) of Cr.P.C. for the offence punishable under section 37(1)(3) and shall suffer imprisonment for one year and shall pay fine of Rs.100/-, i/d. to pay fine to suffer further imprisonment for one month. Hence, this appeal.

2. It is the case of the prosecution that on 13<sup>th</sup> September 2011, an information was received by Mundhawa Police Station that a person named Narayan was brutally assaulted at Balajinagar. Devidas Patil – PW.9 who was officiating as P.I. at Mundhawa Police Station

rushed to the spot and learnt that the injured was shifted to Sasoon Hospital. There P.W.9 learnt that Vengayya Kandira (P.W.1), father of Narayan had already reached the Police Station. P.S.I.Gite recorded the statement of Vengayya Kandira (P.W.1) – first informant. On the basis of his statement Crime No.133 of 2011 was registered against the present appellants for the offences punishable under section 302 r/w 34 and section 504 of IPC. After completion of investigation, charge sheet was filed. At the trial, prosecution examined as many as 10 witnesses to bring home the guilt of the accused.

3. Vengayya Kandira (P.W.1) happens to be the father of deceased Narayan. The accused Vyankat Pinnam and Ramanayya Pinnam happen to be brothers inter-se whereas Accused No.4 - Yangayya Battal happens to be the sister of Accused Nos.1 and 2. The acquitted Accused no.3 Vyankat Battal alias Ravan Gurayya Battal happens to be the son of Accused no.4 – Yangayya. The deceased and Accused no.1 happen to be residents of the same locality whereas Accused no.2 happens to be the resident of Lane no.3.

4. According to P.W.1, on 13<sup>th</sup> September 2011 i.e. the following day of Ganesh immersion, at about 9.00 am Narayan

(deceased) had asked Guraiyya as to why he has abused his father. There was some verbal altercation between them. P.W.1 had intervened, pacified the parties and had told Ramanayya that he would persuade his son Narayan to behave properly. At about 4.00 pm, on the same day, when P.W.1 was at the well, his sister, Yangayya (Accused No.4) along with her son Rawan met Narayan at the well. Narayan and Rawan had again started quarreling. Rawan started beating Narayan with his belt. P.W.1 had apologized to Rawan on behalf of his son.

5. On the same day, at about 7.45 pm, he had learnt telephonically from his wife that Narayan was murdered. P.W.1 immediately reached his house. Upon learning that the injured was shifted to Sasoon Hospital, he had visited Sasoon Hospital where he met Shrinivasan and Navin. Navin happens to be the youngest brother of Narayan.

6. According to P.W.1, upon inquiry, Shrinivasan had informed him that when Narayan was standing at the well at about 7.35 pm, Accused no.4 Yangayya assaulted him with her footwear and four persons were abusing Narayan. Shrinivasan had also intervened to pacify both the sides. In the meanwhile, Ramanayya had caught hold

of Narayan and Vyankat assaulted him on his throat and head. Thereafter, Narayan was admitted in Hospital.

7. That P.W.1 while narrating the prelude to the incident stated that on 13<sup>th</sup> September 2011 at about noon there was a quarrel. Rawan had instigated Vyankat and others to kill Narayan. The FIR is lodged on the basis of the information given by Shrinivasan to P.W.1.

8. That evidence of P.W.2 – Batulla is consistent with the facts narrated by P.W.1 in the FIR as far as the prelude to the incident and the incident of 13<sup>th</sup> September 2011 at 4.30 pm is concerned. The incident as deposed by P.W.2 is as follows :

On the same day i.e. on 13<sup>th</sup> September 2011 at about 7.30 pm., Batulla Sasaiya - P.W.2 along with his friends including Narayan were chitchatting near the well. Yangayya (Accused No.4) abused Narayan and assaulted him with a footwear on his chest. The friends had intervened to pacify both the parties. At that juncture, Ramanayya caught hold of Narayan and Vyankat assaulted Narayan firstly, on his throat with a sickle, the second blow was given on the head. Narayan fell down on the road. Upon witnessing the incident, P.W.2 was frightened and rushed home whereas, Shrinivasan had taken Narayan

to Hospital and the accused had fled from the spot. It is stated in the cross-examination that Shrinivasan was not in their company at that time. Witness has stood the test of scrutiny. His statement was recorded after registration of FIR. It is admitted in the cross-examination that Narayan had abused Yangayya.

9. The evidence of Maladri Borigarala – PW.3 is consistent with the evidence of PW.2. He has stated in his cross-examination that on that day, since he had fever he had been to the clinic while returning home he had seen the incident. He is also resident of Lane No.5. The witness has clarified that accused Vyankat and Ramanayya had arrived on the spot at the time when Yangayya was quarreling with Narayan and thereafter, Vyankat had mounted assault on Narayan with a sickle. He has further stated that on 14<sup>th</sup> September 2011 he had voluntarily visited Police Station at about 10.00 am. At that time, he had learnt that Crime No.133 of 2011 was registered on the earlier day. He has also reaffirmed his said contentions in cross-examination.

10. Dr. Amol Balwant Shinde – PW.8 had conducted autopsy on the dead body of Narayan and has proved the post-mortem notes which are at Exh.35. Post-mortem notes would show that the deceased

had sustained as many as five incised wounds and two abrasions. The injuries are as under :-

- “1. Incised wound over left temporal region, 5 x 1cm x bone deep. Bone fractures, horizontal, margins clean cut, reddish.
2. Incised laceration over neck anteriorly, 5 x 3 cm, tissue deep, distance from suprasternal notch 7 cm margins, interiorly clean cut on right side irregular and contused, reddish.
3. Abrasion over chin interiorly 2.5 x 2 cm irregular margins, reddish.
4. Abrasion on chest left side, 4 x 0.5 cm horizontal above nipple, reddish.
5. Incised abrasion on right shoulder anteriorly, 3.5 x 0.5 cm, reddish.
6. Incised abrasion over right arm upper 1/3rd laterally 6 x 0.5 cm horizontal.
7. Incised wound over right thumb medially, reddish.”

11. Column No.17 of the post-mortem notes would corroborate narration of the incident as is stated by P.W.2 and P.W.3 who are actual witnesses to the incident of assault.

12. Devidas Patil – P.W.9 happens to be the Investigating Officer. He has deposed before the Court in respect of the steps taken

by him in the course of investigation of Crime No.133 of 2011 at Mundhawa Police Station. The Investigating Officer has deposed before the Court that he had learnt about the involvement of the accused from Navin, the younger son of P.W.1 and the brother of the deceased. The scene of offence was shown to the Investigating Officer by Navin. The Investigating Officer had video-graphed the recovery of weapon at the instance of Accused No.1 on 17<sup>th</sup> September 2011. The same was produced before the Court. The said recovery of weapon is disbelieved by the learned Sessions Court.

13. The learned counsel for the appellants has vehemently submitted that there is delay in lodging FIR. In fact, even according to the prosecution, P.W.9 had reached the spot immediately. The incident has taken place at 7.30 pm but the FIR (Exh.37) is registered at 10.15 pm. The delay in registration of offence is not an inordinate delay. The first informant happens to be the father of the deceased. He had initially been to the Hospital and thereafter, has approached the Police Station. The state of mind of the father of the deceased has to be taken into consideration and therefore, the said submission cannot be taken into consideration.

14. It is further argued that the prosecution has not examined either Shrinivasan or Navin who happen to be the eyewitnesses to the incident and therefore, according to the learned counsel, P.W.2 and P.W.3 are got up witnesses. P.W.2 has stated in the cross-examination that Shrinivasan was not in their company when the incident occurred but had arrived on the spot immediately. In fact, he wanted to accompany Shrinivasan to the Hospital. However, his parents had come near the rickshaw and had taken him home. He has further stated that on 15<sup>th</sup> September 2011 at about 10.00 am he had learnt from his mother that the father of Narayan had lodged a report at the Police Station. Thereafter, he threw away his blood stained clothes and had visited the Police Station at about 10.30 am and informed the Police about the prelude to the incident and the actual incident. P.W.2 is an young boy who was studying in 11<sup>th</sup> Standard at the time when the incident had occurred. It was quite natural for him to get frightened after seeing such a ghastly incident. His assertion that he had thrown blood stained clothes out of fear would clearly establish that he had helped Shrinivasan to take the injured to the Hospital. Evidence of P.W.3 is consistent with the evidence of P.W.2.

15. The learned counsel for the appellants has submitted that the appellants are falsely implicated at the hands of the Investigating Agency. Thrust of the argument is on non-examination of Navin and Shrinivasan. On 6<sup>th</sup> February 2015, the Public Prosecutor had filed an application informing the Court that the prosecution does not desire to examine Navin and Shrinivasan and others as they are on the same point. To avoid repetition on the face of record, the prosecution had chosen not to examine multiple witnesses on the same point. The said application is at Exh.89. The Station diary entry shows that one Rahinath Ramaiyya Kaman Boina has admitted Narayan in the Hospital when he was declared dead. This would establish that Shrinivasan was not one who had admitted Narayan in the Hospital. The Station diary entry also shows that Narayan was killed by an unknown person and that he was found in unconscious condition when he was admitted in the Hospital. The said station diary entry is at Exh.85.

16. PW.2 had categorically stated that they had not intervened in the quarrel. In fact, PW.3 has stated that the boys present on the spot had shifted Narayan to Sasoon Hospital.

17. The contention of the learned counsel that the appellants are falsely implicated cannot be taken into consideration.

18. It is a matter of record that the Accused No.4 – Yangayya was the first person who had raised quarrel with Narayan and assaulted him with her footwear. She was not armed with any weapon. Similarly, no overt act is attributed to Ramanayya i.e. Accused No.2 except that he had intervened and was trying to pull Narayan from the scene of offence. The fact that the eyewitnesses have not exaggerated the incident and have not attributed any specific role to Accused Nos.2 and 4 would clearly show that this could not be a case of false implication.

19. The post-mortem notes and the evidence of PW.8 further establish that the injuries sustained by the deceased could have been caused by a sickle and that only Accused no.1 was armed with a sickle. That, Accused Nos.1 and 2 were not present at the spot when Yangayya had raised a quarrel with Narayan and had assaulted him with her footwear. This, by itself, would establish that there was no premeditation and that Accused Nos.2 and 4 had not shared common intention with Accused No.1. In all probabilities, Accused No.2 had no

knowledge that Accused No.1 Vyankat would assault Narayan with a sickle.

20. The learned counsel for the appellants has further submitted that since there was a sudden quarrel and no premeditation, the conviction of Accused No.1 be modified to section 304(I) of IPC. The said submission cannot be taken into consideration for the simple reason that the deceased had sustained about five incised wounds. There was no quarrel, much less any altercation between Narayan and Accused No.1. The first blow was on the throat. The second blow was on left temporal region which was bone deep. There was incised wound on right shoulder and right arm. Column No.20 of the post-mortem notes would show that there was fracture of secondary corresponding to injury no.1. The dura was cut and there was evidence of subarachnoid hemorrhage.

21. The learned APP has vehemently supported the judgment of the Sessions Court and has submitted that the sterling testimony of P.W.2 and P.W.3 would establish that Accused No.1 alone had caused homicidal death of Narayan. There was no grave and sudden provocation. He had seen the quarrel between his sister and Narayan

and he had caused injuries to Narayan which resulted in his death.

22. The nature of injuries would establish the force with which the blows were given. It is not a case of grave and sudden provocation and therefore, conviction recorded against Accused No.1 by the trial Court needs to be upheld. Hence, we pass the following order :-

### **ORDER**

- (i) Appeal is partly allowed;
- (ii) Criminal Appeal No.1103 of 2015 is dismissed;
- (iii) The conviction and sentence against Accused No.1 - Vyankat @ Vyankatesh Chanchayya Pinnam in Crime No.133 of 2011 passed by the Additional Sessions Judge, Pune in Sessions Case No.790 of 2011 vide judgment and order dated 3<sup>rd</sup> June 2015 is hereby upheld and confirmed;
- (iv) Criminal Appeal No.680 of 2015 stands allowed;
- (v) The conviction and sentence against Accused Nos.2 - Ramanayya Chanchayya Pinnam and Accused No.4 - Smt. Yangayya @ Yangamma Gurayya Battal in Crime No.133 of 2011 passed by the Additional Sessions Judge, Pune in Sessions Case No.790 of 2011 vide judgment and order

dated 3<sup>rd</sup> June 2015 is quashed and set aside;

- (vi) Accused Nos.2 and 4 (Appellants in Criminal Appeal No.680 of 2015) are acquitted of all the charges levelled against them;
- (vii) The Accused Nos.2 and 4 (Appellants in Criminal Appeal No.680 of 2015) are on bail. Their bail bonds stand cancelled;
- (viii) Fine amount, if any paid, be refunded;
- (ix) Appeals are disposed of on above terms.

**(N.R. BORKAR, J)**

**(SMT. SADHANA S. JADHAV, J)**