

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 114 OF 2016

Dattaram Hari Pandare
(Through Nashikroad Central Jail) .. Appellant

V/s.

The State of Maharashtra .. Respondent

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Ms. Nasreen S.K. Ayubi, appointed advocate for the appellant
Mr. Arfan Sait, APP for respondent – State

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

RESERVED ON : 27th SEPTEMBER, 2021

PRONOUNCED ON : 29th OCTOBER, 2021

JUDGMENT :- *(Per Prithviraj K. Chavan)*

1. Dattaram H. Pandare, the appellant herein, has preferred this appeal against a judgment and order of conviction rendered by the Sessions Judge, Sindhudurg on 17th August, 2015 holding him guilty of the offence of murder and sentencing him to life imprisonment.
2. The facts in brief are as follows :-

3. Deceased Murgesh Gavandar was a resident of village Shirgaon. He was residing with his wife Bharati (since deceased and accused no.1) along with three children. PW-7 Aditya Murgesh Gavandar is the son of deceased Murgesh.

4. Sometime in the year 2010, deceased Murgesh was found missing from his residence. When his brother – Shanmugam Gavandar inquired with his wife deceased Bharati, she informed that Murgesh had eloped with one lady after performing a marriage. On 12.04.2011 Bharati lodged a missing report with the Police Station, Deogad stating that her husband (deceased Murgesh) was missing w.e.f. 03.01.2010 from village Shirgaon. Bharati thereafter started living at Kankavali with her son and two daughters. However, she died due to accidental burns on 06.08.2012 (**Exh.53**).

5. PW-7 Aditya, thereafter started residing with his grandfather and uncle at Rangneli Indiranagar. Tal. Tarikere, Dist. Chikmangloor, State-Karnataka. In the year 2014 Krishnan Gavandar – father of the deceased Murgesh, after informing his family members, came to Deogad Police Station to inquire about the whereabouts of his son Murgesh. When he was about to leave for Deogad, PW-7 Aditya, for the first time, informed his grandfather that his mother Bharati along with her paramour Dattaram Pandare committed murder of Murgesh by throwing a grinder stone (“पाटा”) on his head and that the dead body of the deceased

Murgesh was thrown into the septic tank of the latrine at Shirgaon. Therefore, on 28.07.2014 father and brother of the deceased Murgesh approached the Police Station, Deogad along with PW-7 Aditya and informed the police about the occurrence.

6. On the same day, PW-8 Shri. Bodake, PI. along with other police staff visited house of PW-6 Nitin Tawade at Shirgaon, where the deceased Murgesh used to reside with his family before missing.
7. PW-7 Aditya, had shown the septic tank of the latrine which was beside the house of PW-6 Nitin Tawade, in the presence of Tahasildar, Deogad. When lid of the septic tank was removed, the skeleton of Murgesh with full pant was found in the septic tank. The skeleton was removed from septic tank and when it was properly arranged, it was found to be a full skeleton of a human. A spot panchanama (**Exh.10**) was drawn and a panch yadi (**Exh.9**) was also drawn on the spot itself. Inquest panchanama of the skeleton (**Exh.37**) was prepared in the presence of panch witnesses. The hind portion of the skull was found pressed. On the same day, Shanmugam Gavandar lodged an FIR (**Exh.45**) bearing Crime No. 26 of 2014 under Section 302 and 201 r/w 34 of the Indian Penal Code.
8. During investigation, the skeleton was referred to the Department of Anatomy, Medical College, Miraj and it was

reported that all the bones found in the septic tank are of human and the approximate age of the deceased was between 32 to 40 years. It was a skeleton of a male.

9. The Doctor had informed that skull exhibits evidence of depressed fracture of left parietal bone extending on to left temporal bone and left side of occipital bone. It was further reported that all the bones are of a same person (**Exh.43**). Femur bone of the skeleton and blood samples of PW-7 Aditya and Krishnan Gavandar were referred to Forensic Laboratory, Kalina, Mumbai for its opinion (**Exh.28**).
10. Statement of PW-7 Aditya also came to be recorded by Judicial Magistrate, First Class, Deogad under Section 164 of the Code of Criminal Procedure (**Exh.46**). After investigation and as a result of investigation a charge-sheet came to be filed in the Court of J.M.F.C., Deogad against the appellant as well as deceased Bharati under Section 302, 201 read with 34 of the Indian Penal Code. After committal, a charge was framed against the accused under Sections 302 and 201 of the Indian Penal Code. It was read over and explained to the appellant to which he pleaded not guilty and came to be tried.
11. The defence of the appellant was of total denial.
12. To substantiate the charge, prosecution examined as many as 8 witnesses coupled with DNA report (**Exh.38**), C.A. Report

(**Exh.39**), report submitted by Anatomy Department, Government Medical College, Miraj (**Exh.43**) and missing report dated 12.04.2011 lodged by the deceased Bharati with Deogad Police Station (**Exh.48**).

13. The learned Sessions Judge, after going through the evidence of the prosecution witnesses and considering the arguments of the respective sides, by the impugned judgment and order convicted the appellant and sentenced him to suffer life imprisonment *inter alia* imposed fine of Rs.500/-. However, he acquitted the appellant of the offence punishable under Section 201 of the Indian Penal Code.
14. We heard Ms. Ayubi, the learned Counsel for the appellant. She took us mainly through the evidence of PW-7 Aditya and vehemently urged to disbelieve him on the ground that he had disclosed about the alleged incident after 5 years, which he could have disclosed to his grandfather much earlier. According to her, such a long delay in filing an FIR creates a doubt about the authenticity of the prosecution case. She also took us through the evidence of other witnesses showing certain minor discrepancies in the versions of the witnesses and prayed for giving a benefit of doubt to the appellant.
15. *Per contra*, the learned APP supported the impugned judgment by emphasizing on the evidence of not only PW-7 Aditya but also medical evidence, post mortem report and other documentary evidence on record. The learned APP

would argue that the delay in lodging the FIR has been satisfactorily explained and, therefore, there is no reason to doubt the veracity of the prosecution case and the evidence of its witnesses. He would submit that even though the case partly rests on circumstantial evidence, yet, raising a false defence itself is a circumstance pointing towards the complicity of the appellant in commission of the offence.

16. This is a peculiar case wherein the dead body of deceased Murgesh was unearth in the form of a skeleton from the septic tank of latrine after a period of 4 years. For the said reason, the post mortem examination of the dead body could not be conducted and cause of his death could not be ascertained, save and except, a depressed fracture of left parietal bone extending on to left temporal bone and left side of occipital bone.
17. The medical evidence tendered by the prosecution is in the form of a report submitted by the Professor of Anatomy Department, Government Medical College, Miraj. Having examined the skeleton of deceased Murgesh (**Exh.43**), the Anatomy Department, reported thus :-

- “(1) All available bones are human,*
- (2) The approximate age of the deceased is between 30 to 40 years.*
- (3) The sex of the deceased is male.*
- (4) Skull shows evidence of depressed fracture of left parietal bones extending on to left temporal bone and left side of occipital bone. Whether the injury is ante-mortem or postmortem*

cannot be opined.

(5) *The skull and mandible properly articulate with each other; body of sternum also properly articulates with manubrium indicating they are of same person.”*

18. At the outset, Report submitted by the Department of Anatomy, Government Medical College, Miraj indicates that all the bones found in the septic tank of the house of Nitin Tawade (the then landlord of the deceased Murgesh and his wife deceased – accused Bharati) were of a single male. The skeleton and bones were of a male whose approximate age, as per the said report, was 30 to 40 years, and the skull of the deceased shows evidence of depressed fracture of the left parietal bone extending on to the left temporal bone and left side of occipital bone. However, it is evident of the fact that it had been caused due to some heavy and solid object. It is pertinent to note that the expert, who had examined the skeleton could not opine whether the injury noticed on the skull was ante-mortem or postmortem?

19. For that matter, it would be expedient to look into the other evidence available on record, mainly in the form of an oral testimony of PW-7 Aditya, sole eye-witness of the incident and the son of the deceased - accused Bharati. At the time of recording of his evidence, he was 15 years old and, therefore, he was probably 10 years old on 03.01.2010. We are mindful of the fact that the evidence of a child witness has to be scrutinized carefully, for, sometimes it might suffer from serious infirmity and the likelihood of tutoring such

witness can not be totally ruled out.

20. The Judicial Magistrate, First Class, Deogad had recorded statement of PW-7 Aditya under Section 164 of the Criminal Procedure Code (**Exh.46**). Before that, even the Investigating Officer had recorded the statement of PW-7 Aditya in question and answer form. It has been noticed by the learned Sessions Judge that he had observed and satisfied that though, at the time of recording his evidence, PW-7 Aditya was 15 years of age, he knew sanctity of oath and, therefore, an oath was administered to him. The learned Sessions Judge had also satisfied himself on the question whether PW-7 Aditya was free from any pressure or undue influence from any corner. The learned Sessions Judge further observed that he was satisfied that the witness was fully matured, and, in fact, cannot be termed as 'child witness' since at the time of his evidence, he had already attained 15 years of age.

21. The learned Sessions Judge has, therefore, rightly placed a useful reliance upon a decision of the Hon'ble Supreme Court in the case of ***Tehal Singh and Ors. Vs. State of Punjab, AIR 1971 SC 1347***. It has been observed that "*in our country and particularly in the rural areas, it is difficult to think of a lad of thirteen years as a child. A vast majority of boys round about that age go to the fields and do men's work. They are certainly capable of understanding the significance of the oath and the necessity to speak the truth.*" As such,

the evidence of PW-7 Aditya has been rightly relied upon by the learned Sessions Judge.

22. PW-7 Aditya testified that accused - Dattaram used to visit his house. He had illicit relations with Bharati Gavandar (deceased mother of the witness). On several occasions, PW-7 Aditya had seen accused – Dattaram and deceased accused - Bharati sleeping together in the night hours. He made it clear that due to such relations between the accused – Dattaram and his mother – deceased accused Bharati, his father did not like accused Dattaram and, therefore, there were frequent quarrels between his parents.
23. PW-7 Aditya categorically testified that on the date of incident, accused Dattaram came to his house. After sometime, deceased Murgesh returned home who was under the influence of liquor. There was a quarrel between the deceased Murgesh and accused Dattaram. Thereafter, Bharati provided more liquor to deceased Murgesh and made him to sleep in the house. When the deceased was sleeping, who had already been under the influence of liquor, Bharati and accused Dattaram threw a grinding stone on the head of deceased Murgesh and killed him.
24. Such conduct of Bharati demonstrates that it had been planned in advance, along with the accused Dattaram to eliminate deceased Murgesh in the house itself and perhaps under the belief that he might not raise shouts due to

intoxication. The evidence further indicates that thereafter, accused Dattaram left the house. The dead body of deceased Murgesh was thrown in the septic tank by Bharati and her daughter. However, involvement of daughter of the deceased in assisting her mother to throw the dead body in the septic tank is proved to be an omission.

25. In his statement under Section 164 of the Criminal Procedure Code, PW-7 Aditya had stated as to how his mother had provided more liquor to deceased Murgesh, who was already under the influence of liquor. There are some minor discrepancies in the evidence of PW-7 Aditya. However, no much importance is required to be given, for, his evidence is otherwise cogent and consistent which finds corroboration from the other evidence on record, including the medical evidence.
26. It would be apposite to extract few questions put to the witness during the examination-in-chief by the learned prosecutor in order to ascertain the truthfulness of the version of PW-7 Aditya. Most of the examination-in-chief of PW-7 Aditya is in question and answer form, as much as, there are no leading questions. Following few questions and answers are sufficient to grasp the prosecution's story, which read thus :-

“Que.7:- Who used to visit your house?”

Ans. :- Shri. Dattaram Pandare always used to visit our house.

Que.8:- What was the feeling of your father about it?

Ans. :- My father used to dislike the visit of Dattaram Pandare to our house.

Que.9:- When your father used to dislike Dattaram Pandare?

Ans. :- As Dattaram Pandare used to sleep alongwith my mother, my father used to dislike him.

Que.10:- Because of it what was happening between your father and mother?

Ans. :- Quarrel used to take place between my father and mother.

Que.14:- When Dattaram Pandare used to visit your house?

Ans. :- Dattaram Pandare used to visit our house in the afternoon.

Que.15: At what place you used to sleep in the house?

Ans. : My parents, my sisters and I myself used to sleep jointly in the middle room of the house.

Que.16 :- What was happening thereafter?

Ans. :- In the night, my mother used to go in kitchen and sleep alongwith Dattaram Pandare.

Que.17:- How did you know this?

Ans. :- Sometimes I used to get up for urinating and at that time I used to see the said fact.

Que.18 :- What was happened on that day of incident?

Ans. :- It was Wednesday on the day of incident. As it was holiday of my father, he had gone out of house for consuming liquor. Dattaram came to our house in the afternoon. Thereafter my father returned home. Quarrel took place between my father and Dattaram. My mother gave more liquor to my father and made him to sleep. Thereafter, my mother and Dattaram threw

grinding stone on the head of my father and killed him. Thereafter body of my father was covered with one bed sheet. Thereafter Dattaram fled away from the house. Thereafter my mother and my sister threw corpse of my father in the toilet tank.

Que.19 :- Where was the toilet tank?

Ans. :- Toilet tank was by the side of our house.

Que.20 :- Where the grinding stone was kept thereafter?

Ans. :- After killing my father, my mother threw the grinding stone at the backside of our house.

Que.21 :- How did you come to know about this incident?

Ans. :- I was in the house at the time of incident.

Que.23 :- What was happened on next day thereafter?

Ans. :- Mother and my sister cleaned the flooring in the house by wiping out the blood fallen on the ground.

Que.27 :- Where did you go to reside after the death of your mother?

Ans. :- We went to reside at Chikmanglur at the house of grandfather.

Que.28 :- What was asked by your grandfather to you ?

Ans. :- Grandfather asked me, 'where is your pappa'?

Que.29 :- What did you tell to grandfather ?

Ans. :- I narrated the entire aforesaid incident to grandfather.

Que.30 :- Who was present there when the aforesaid incident was narrated to grandfather?

Ans. :- My Uncle Shanmugam Krishnan Adridravid @ Gawandar was present there when I told the aforesaid incident to grandfather.

Que.33 :- Why did you not narrate the said incident to

anybody else ?

Ans. :- As my mother gave threats of killing to us I did not tell about it to anybody else.

Que.35 :- Do you know Dattaram Pandare ?

Ans. :- Yes. He is present before the Court today. I have identified him.

Que.36 :- Can you identify the grinding stone if shown to you ?

Ans. :- Yes. Said grinding stone now shown to me. I have identified it. My mother and Dattaram Pandare have killed my father by the same grinding stone.”

27. Despite extensive cross-examination, nothing could be elicited from his mouth by the defence. Rather, it has been reiterated in cross that because of the addiction of his father to liquor, there used to be frequent quarrels between his mother and father. Interestingly, defence had asked the following question, which speaks for itself :-

“Que.41 :- Accused was seen in the police station for the first time by you after he fled away by murdering your father?

Ans. :- It is not correct. He used to visit our house after the incident also.”

28. This answer is indeed suggestive of the fact that both the accused were assured or one may say, confident of one fact that by lodging a missing complaint *qua* the deceased Murgesh, nobody would suspect about his murder. The said fact had emboldened the accused who continued his visits to Bharati's house, even after eliminating deceased Murgesh.

29. It is pertinent to note that in his statement under Section 313 of the Criminal Procedure Code, when it was asked to the accused as regards the evidence of PW-6 Nitin Tawade that he had allotted his house bearing no. 1140 situate at Shirgaon, near Deogad-Nipani road to accused Bharati Gavandar, deceased - Murgesh and their children without any consideration, he answered it in the affirmative. He further admits it to be correct that during the period 2010 to 2011, Bharati Gavandar left the said house when her husband (deceased Murgesh) was missing. This is a relevant fact.
30. The DNA report (**Exh.38**) indicates that amplifiable DNA from the bone of the deceased could not be obtained. Therefore, the DNA of the deceased could not be compared with DNA of PW-7 Aditya and his grandfather to fix the identity of the deceased Murgesh. Nevertheless, it is nobody's case that the skeleton extracted from the septic tank was not of deceased Murgesh. It is sufficiently established that the clothes over the skeleton were of deceased Murgesh himself. PW-1 Madhukar, who acted as a panch witness has deposed that the septic tank was admeasuring 4 feet deep, 6 feet length and 4 feet breadth. It is apparent from the evidence on record that the septic tank was covered. Looking to the length, breadth and depth of the septic tank, there was hardly any chance of emanating stench from the said tank or even the possibility of attracting stray dogs had been ruled out. Due to the said reason,

coupled with the fact, that there was a missing complaint, nobody could suspect that the dead body of deceased Murgesh had been embedded in the tank like a coffin.

31. The police had also snapped photographs of that place which are produced on record and proved at **Exh.11 to 23** colly. He categorically deposed that the police took out one full pant smeared with mud from the said septic tank. He had even identified the said full pant during the trial with label with his signature.
32. The CA report (**Exh.39**) shows that though PW-2 Chandrashekhar Satam has proved that in his presence accused Dattaram showed one grinding stone to the police (article 2). No blood stains were found when it was referred to chemical analyzer. It is obvious that after such a long period there could hardly be any blood stains. That itself would not render the prosecution case unbelievable. However, as already discussed hereinabove, the testimony of PW-7 Aditya inspires confidence and implicit reliance can be placed upon it to establish the fact of commission of murder of deceased Murgesh by accused Dattaram and deceased – accused Bharati.
33. Unfortunately, complainant Shanmugam Gavandar could not be traced and, therefore, could not be examined as a prosecution witness, yet, the Investigating Officer who received the First Information Report has duly proved the

same. The complainant Shanmugam Gavandar had, in fact, merely set the criminal law into motion by lodging the first information report.

34. It would be essential to go through the evidence of Investigating Officer, PW-8 Mr. Bodake - Investigating Officer. According to this witness, on 28.07.2014 PW-7 Aditya along with his uncle Shanmugam Gavandar came to the Police Station, Deogad, and as per information given by the complainant; the Police and panchas had visited the house of PW-6 Nitin Tawade at Shirgaon. The Executive Magistrate accompanied them. PW-7 Aditya pointed towards the septic tank of the latrine abutting the house. The septic tank was opened and a full human skull was taken out as already stated hereinabove.
35. PW-1 Madhukar Bandekar, a panch witness had supported the version of the PW-8 Mr. Bodake, Investigating Officer that in his presence a full skeleton of a human being was taken out from the septic tank of the house of PW-6 Nitin Tawade. It was in the presence of Executive Officer. A panchanama of the skeleton is proved at **Exh.9**.
36. PW-1 Madhukar had also proved the spot panchanama at **Exh.10**. The testimonies of this witness remained intact during the cross. It is pertinent to note that PW-1 Madhukar testified that the skull and the skeleton was found in a pressed condition. The testimonies of PW-1 Madhukar,

PW-7 Aditya and PW-8 Mr. Bodake - Investigating Officer, if juxtaposed, are found to be quite consistent on the aspect of the removal of skeleton from the septic tank and the depressed skull. This important circumstance has been established by the prosecution without any doubt. Rather, it confirms the testimony of PW-7 Aditya as to how, after committing the murder of his father, his dead body was thrown into the septic tank by his mother and sister.

37. It can be safely concluded that accused Dattaram used to visit the house of the deceased Murgesh and had illicit relations with Bharati. PW-7 Aditya himself had witnessed accused and Bharati sleeping together during night hours. What can be more painful and unfortunate for a son to witness his mother sleeping with another person, that too, when his father used to remain present in the house, *albeit*, under the influence of liquor? It is also clear from the evidence of PW-7 Aditya that due to such amorous relations between deceased – accused Bharati and her paramour accused – Dattaram, deceased Murgesh did not like accused and, therefore, there used to be quarrels between the husband and wife. Obviously, accused Dattaram and Bharati must have conspired to eliminate the *hurdle* from their amorous relations. Thus, due to the said reason, an inevitable happened !
38. In so far as acquaintance of accused – Dattaram and Bharati is concerned, PW-5 Amit Salgaonkar, who runs a hotel at

Shirgaon, Dhopatewadi by name 'Chandan Garden Restaurant' testified that accused was working as a cook in his hotel since May, 2007 and Bharati was cleaning utensils in his hotel since June, 2007. Bharati served in his hotel till April, 2008. Thereafter, she left the work. This witness had tendered extracts of attendance register of his hotel in support of his contention, which are at **Exh.32 to 34**. He specifically deposed that he had maintained the attendance book regularly and that he had noticed accused and Bharati used to talk with each other. The accused had left his hotel from 27th August, 2008. This evidence indicates that Bharati and accused Dattaram were well acquainted with one another.

39. Indeed, there was a delay on the part of the PW-7 Aditya in disclosing the occurrence to his grandfather and uncle. However, he had tendered a plausible explanation for the same by stating that his mother had threatened to kill him and, therefore, he kept mum. It can not be lost sight of the fact that at the time of incident, PW-7 Aditya was just a tender boy of 10 years, who must have been totally under the control and influence of the mother as she was the main earning member of the family. Having noticed the incident, one can understand the trauma, stress and mental agony suffered by this witness at such a tender age. He was bound to keep his mouth shut, for, the threats which he had received were from none other than his mother. If she could kill his father, he would also meet with same fate.

40. Admittedly, Bharati died due to accidental burns on 06.08.2012. After the death of the mother, PW-7 Aditya could gather courage to disclose the fact to his grandfather, that too when he came to know that his grandfather was going to Deogad in search of deceased Murgesh. For the said reasons, we do not find that the delay was either deliberate or with some ulterior motive.
41. It reveals from the FIR that when grandfather of PW-7 Aditya spoke of his plan to go to the Police Station, Deogad, for searching his son Murgesh, only then PW-7 Aditya opened his mouth after a long time and burst out his emotions by narrating the truth to his grandfather as regards the murder of his father. The feelings which he had, till then suppressed due to the threat of his mother, erupted suddenly when he heard his grandfather going to search his father. As has been observed hereinabove, it is quite obvious that if his mother could kill his father, there was no reason for PW-7 Aditya to perceive her threats lightly. Considering all these factors, we do not find any reason to suspect any foul play or embellishment in lodging the FIR after a period of 4 years. The evidence of PW-7 Aditya inspires full confidence. There is no reason to disbelieve him.
42. The defence has admitted the missing report (**Exh.48**) lodged by Bharati herself informing the police that her husband was missing from 03.01.2010. In the missing

report, age of the deceased was mentioned as 38 years which again corroborates the report of Anatomy Department, Government Medical College, Miraj (**Exh.43**). It further corroborates the testimony of PW-7 Aditya that the dead body of his father was thrown into the septic tank. As per the Anatomy Department's report, the age of the person whose skeleton was found in the septic tank was 30 to 48 years. It further indicates that the skull of the deceased shows depressed fracture which corroborates the testimony of PW-7 Aditya that accused Dattaram and his mother had thrown a grinding stone on the head of his father.

43. Even the possibility of tutoring PW-7 Aditya by his relatives is totally ruled out in light of the fact that on the date of recording of evidence of PW-7 Aditya, his uncle was not traceable. Therefore, there was no question of tutoring PW-7 Aditya by his relatives.
44. The learned Sessions Judge has, therefore, rightly accepted the evidence of PW-7 Aditya *vis-a-vis* the other evidence on record including the report of the Anatomy Department, Government Medical College, Miraj and the conduct of deceased – accused Bharati. It is nobody's case that deceased Murgesh had some enmity with some other person/s in the village.
45. Having considered the entire evidence available on record, we do not find any reason to interfere with the impugned

judgment and order of conviction rendered by the learned Sessions Judge, in convicting the accused of an offence under Section 302 of the Indian Penal Code by sentencing him to undergo life imprisonment and fine of Rs.500/-.

46. Since the learned Sessions Judge found no evidence *qua* Section 201 of the I.P.C., he has been rightly acquitted of the said offence. Consequently, the appeal is devoid of merits and hence, stands dismissed.

(PRITHVIRAJ K. CHAVAN, J.)

(SMT. SADHANA S. JADHAV, J.)