

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 93 OF 2018

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| 1. Sachin s/o Ramesh Sutrave
Aged about 52 years | } | <u>.. APPELLANTS</u> |
| 2. Pravin s/o Devidas Pote
Aged about 22 years, | | |
| Both R/o; Malmasola, Tahsil and District
– Yavatmal (In Jail) | | |

Versus

The State of Maharashtra, Through Police Station Officer, Police Station Yavatmal (Rural), District – Yavatmal	}	<u>.. RESPONDENT</u>

Mr. R.M. Daga, Advocate for appellants
Mr. T.A. Mriza, A.G.P. for respondent

**CORAM: V.M. DESHPANDE, &
 AMIT B. BORKAR, JJ.**

DATE : SEPTEMBER 01, 2021

JUDGMENT : (Per : Amit B. Borkar, J.)

Through this appeal, the appellants challenged judgment and order dated 22/12/2017, passed by the Sessions Judge, Yavatmal in Sessions Trial No. 117/2015, convicting and sentencing them in the manner stated hereinafter;

- i. Under Section 302 read with Section 34 of the Indian Penal Code to suffer rigorous imprisonment

for life and to pay fine of Rs.3,000/-, in default to undergo three months rigorous imprisonment;

- ii. Under Section 341 read with Section 34 of the Indian Penal Code to suffer simple imprisonment for one month and to pay fine of Rs.5,000/- and in default to undergo seven days simple imprisonment.

2. Lalita Ajit Chavan – informant (PW8) lodged a report (Exh.53) on 23/08/2015 with Yavatmal (Rural) Police Station stating that she and her husband Ajit Vinayak Chavan (deceased) were resident of Malmasola along with Pawan Sudhakar Chavhan (PW 4). In the said village, there is one fair price shop having license in the name of Antakalabai Ghorpade, which was being run by accused No.1. On 23/08/2015, i.e. three days prior to the date of incident, deceased Ajit had gone to the said fair price shop conducted by accused No.1 and there was quarrel between Ajit and accused No.1 on the ground of non-supply of bill of the food item purchased by Ajit. Accused No.1 threatened and abused Ajit of dire consequence. Around 11:00 AM on 23/08/2015, while Ajit was standing in the courtyard of his house, son of accused No.1 (child in conflict

with law) came there and had abused Ajit on account of supply of bill. They threatened to kill Ajit and therefore, Lalita (PW8) and Ajit (deceased) went to Police Station Yavatmal (Rural) on motorcycle and lodged report against accused No.1 alleging threat to kill him.

3. While returning back from the Police Station on motorcycle, around 12:30 PM when Lalita (PW8) and Ajit (deceased) reached spot near first turn of Arjuna Ghat, they slowed down due to speed breaker, at that time, accused Nos.2 and 3 along with child in conflict with law suddenly came in front of motorcycle of Ajit. The motorcycle slowed down near the speed breaker. The accused No.3 kicked the motorcycle of Ajit and therefore, informant - Lalita (PW 8) along with Ajit (deceased) fell down on the road. While Ajit got dragged on the road with motorcycle. Accused Nos.2 and 3 along with child in conflict with law ran towards Ajit. The child in conflict with law caught Ajit whereas accused Nos. 3 and 4 gave several knife blows on chest, abdomen and back of Ajit. Lalita (PW 8) tried to stop people on the road requesting for help as her husband was being assaulted, but, nobody stopped. The accused No.2

and 3 along with child in conflict with law fled on their motorcycle after the assault. When Lalita (PW 8) went near her husband Ajit, he was lying in the pool of blood. Nilesh (PW 7) came there and other persons also gathered. Samadhan Dhandre, Assistant Police Inspector (PW 12) of Yavatmal (Rural) Police Station received information about the incident and therefore, came at the spot of incident. He after noticing the dead body on the spot of incident called panchas and prepared spot panchanama (Exh.78). He seized simple soil, blood mixed soil and blood stained grass from the spot under seizure panchanama (Exh.79).

4. Lalita (PW 8) thereafter was brought to Police Station, where she lodged report against the accused persons. Samadhan Dhandare - Investigating Officer (PW 12) prepared the inquest panchanama, got post-mortem done, seized cloths of deceased under seizure panchanama (Exh.39), recorded statement of witnesses, arrested accused No.1 on 23/08/2015 and accused Nos.2 and 3 on 25/08/2015. He seized cloths of accused and child in conflict with law along with their blood samples. On 23/08/2015, he seized clothes of accused No.2 and

3 under panchanamas (Exhs.84 and 85). He recovered knife at the instance of accused No.2 from the bushes near water ditch on Bothbodan road under panchanama (Exh.74) and also recovered knife at the instance of the accused No.3 from bushes near water ditch on Bothbodan road under panchanama (Exh.75). After completion of investigation, charge-sheet came to be filed against the accused persons for their involvement in commission of offence as referred to above. The offence punishable under Section 302 of the Indian Penal Code being exclusively triable by the Court of Sessions, the case was committed to the Sessions Court for trial.

5. Charge (Exh.10) came to be framed against the accused persons for offences punishable under Sections 341, 337 and 302 read with Section 34 of the Indian Penal Code. As the accused pleaded not guilty, the trial commenced against them. From the cross-examination and the statements under Section 313 of the Code of Criminal Procedure, the defence of the accused is of false implication.

6. During the trial, the prosecution examined 13

witnesses, two of them Nilesh Vinayak Chavhan (PW 7) and Lalita Ajit Chavan (PW 8) were examined as an eye witnesses. The learned Trial Court believed the evidence of Lalita (PW 8) as eye witness and convicted and sentenced the appellants in the manner stated in paragraph No.1 referred to above.

7. We have heard Mr. R.M. Daga, learned Advocate for the appellants and Mr. T.A. Mirza, learned A.P.P. for the respondent. Mr. Daga, learned Advocate for the appellants submitted that the testimony of Lalita (PW 8) alleged to be eye witness does not inspire confidence and the learned Trial Judge is not justified in convicting the appellants relying on the sole testimony. He submitted that there are material inconsistencies in the testimony of the Lalita (PW 8). He submitted that in the alternative the learned Trial Judge was not justified in convicting the appellants under Section 302 of the Indian Penal Code and at the most the learned Trial Court could have convicted the appellants for offence under Section 304-II of the Indian Penal Code.

8. Mr. T.A. Mirza, learned A.P.P. appearing for

respondent – State supported the impugned judgment by submitting that the testimony of Lalita (PW 8) inspires confidence. The ocular account of eye witness Lalita (PW 8) is supported by medical evidence and other circumstantial evidence in the form of recovery of weapons and blood stained clothes. He submitted that from the nature of injuries on the person of Ajit (deceased), it is clear that the appellants intended to cause death of deceased and therefore, the Trial Court is fully justified in convicting the appellants under Section 302 of the Indian Penal Code.

9. We have gone through depositions of prosecution witnesses; the material exhibits tendered and proved by the prosecution; the statements of appellants recorded under Section 313 of the Code of Criminal Procedure and impugned judgment. After giving our due deliberation to the matter, we are of the opinion that this appeal deserves to be dismissed since as we feel that offence under Sections 302 and 341 of the Indian Penal Code is made out against the appellants by the evidence on record.

10. So far as involvement of the appellants in the incident is concerned, the same has been established beyond the pale of doubt and credible evidence furnished by Lalita (PW 8), recovery of weapons at the pointing of the appellants and recovery of clothes having human blood.

11. As is evident from paragraph No.1, ocular account furnished by Lalita (PW 8), she had narrated the manner of assault on Ajit (deceased). She stated that on 23/08/2015, when the accused threatened them that they will commit their murder, she along with her husband Ajit (deceased) came to Yavatmal (Rural) Police Station for lodging report. After lodging report while they were returning to their village on motorcycle, the accused No.3 kicked their motorcycle with the result they fell down. The accused Nos.2 and 3 gave knife blows on the stomach and back of her husband, while Chiku caught her husband. After giving blows on her husband, accused Nos. 2 and 3 rushed towards Lalita (PW 8), at that time, she ran towards Yavatmal. She tried for help by shouting, but, nobody came to her rescue. Police brought her to Police Station and she lodged report with Police Station.

12. We have examined version of Lalita (PW 8) and we find herself to be implicitly truthful witness. In the first place, it should be borne in mind that she has explained the circumstances in which she saw the incident. Secondly, it should be remembered that the manner of assault described by her is corroborated by the medical evidence. She stated that the appellants gave knife blows on stomach, abdomen and back of her husband (deceased). The evidence of Dr. Kranti Sundarrao Raut (PW 9), who performed autopsy on the corpse of Ajit (deceased) corroborates version of Lalita (PW 8) inasmuch as she found stab wounds on the chest, abdomen and on the back of Ajit (deceased). We are aware that Lalita (PW 8) being wife of deceased is an interested witness and therefore, the Court is required to scrutinize her evidence with circumspection. We have exercised circumspection and find evidence of Lalita (PW 8) implicitly truthful.

13. We feel that solitary statement of Lalita (PW 8) is itself sufficient to fix involvement of the appellants in the crime. After all, the time honoured Rule of appreciation of evidence is

that evidence should be judged and not counted. It should be borne in mind that Section 134 of the Indian Evidence Act, 1872, provides that “no particular number of witnesses shall in any case be required for proof of any fact”. The provisions contained in Section 134 of the Indian Evidence Act, 1872 are founded on the principle that evidence has to be weighed and not to be counted. It should be remembered that reliability of evidence is only rule of prudence and not an inflexible requirement of law.

14. However, we have bonus evidence against the appellants in the form of recovery of blood-stained clothes and recovery of blood-stained knives and their pointing out. CA report (Exh.97) clearly indicates that blood of Ajit (deceased) of group ‘B’ was found on the baniyan and full pant of accused No.2 and pant of accused No.3. In our view, the circumstance that blood stained baniyan and full pant of accused No.2 and pant of accused No.3 recovered at the instance of the appellants on which the chemical analysis found the human blood bearing group ‘B’, which is an incriminating circumstance. The Hon’ble Apex Court in the paragraph No.10 of quoted case of Khujji @

Surendra Tiwari Vs. State of Madhya Pradesh (1991) 3 SCC

627; has held that presence of human blood on the recovered article is an incriminating evidence. In our view, the evidence referred to above conclusively established involvement of the appellants in the incident.

15. The learned Advocate for the appellants failed in advancing any plausible explanation, which could pursue us to disbelieve ocular account of Lalita (PW 8) or evidence of recovery of knives and the pointing out of the appellants.

16. In our view, the learned Trial Judge is fully justified in convicting the appellants for offence under Section 302 of the Indian Penal Code. The evidence of Lalita (PW 8), which we have accepted candidly and clearly shows that the appellants intentionally inflicted knife blows on the chest and back of deceased. The evidence of Autopsy Surgeon Dr. Kranti Raut (PW 9) clearly shows that the stab wounds inflicted on the chest, abdomen and back i.e. injuries at Sr. Nos. 5 to 10, 14 to 20 and 23 of Column No.17 corresponding with internal injuries in Column Nos. 20 and 21 of post-mortem report were sufficient to

cause death in ordinary course which were ante-mortem injuries because weapons recovered at the instance of the appellants. In our view, act of appellants intentionally inflicting blows on the abdomen, chest and back of deceased and causing injuries, which could have caused death, would be squarely covered by third clause of Section 300 of the Indian Penal Code.

17. The analysis of third clause of Section 300 of the Indian Penal Code would show that for its application, two requirements have to be satisfied namely -

- (a) There should be an intention to inflict a bodily injury (it should not be accidental) and
- (b) The injury inflicted should be sufficient in ordinary course of nature to cause death.

18. Since the evidence of Lalita (PW 8) shows that the appellants intentionally inflicted knife blows on the chest, abdomen and back of the deceased and testimony of Dr. Kranti Raut – Autopsy Surgeon (PW 9) makes it clear that injuries on chest, abdomen and back sustained by the deceased were the cause of death, both the prerequisites are satisfied.

19. For the aforesaid reasons, we confirm the conviction and sentence of the appellants for offences punishable under Sections 302 and 341 of the Indian Penal code and dismissed this appeal.

20. Criminal Appeal No. 93 of 2018 is therefore dismissed.

JUDGE

JUDGE

MP Deshpande