

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

CRIMINAL APPEAL NO.558/2018

Vinod Manikrao Deolkar (In Jail)

Aged about 29 years,

Occupation: Labour,

R/o. Nandgaonmukh, Tahsil : Saoner,

District : Nagpur.

... APPELLANT

----VERSUS----

The State of Maharashtra,

Through Police Station Officer,

Police Station Kelwad, Tah. Saoner,

District : Nagpur.

... RESPONDENT

Mr. Amit Kukday, Advocate for the Appellant.

Mr. M. J. Khan, Additional Public Prosecutor for Respondent/State.

CORAM: **M. S. SONAK AND**
 PUSHPA V. GANEDIWALA, JJ.

DATE: **03.12.2021.**

JUDGMENT : (PER M. S. SONAK, J.)

1. Heard Mr. Amit Kukday, learned Counsel for the appellant, and Mr. M. J. Khan learned Additional Public Prosecutor for the respondent/State.

2. This appeal is directed against the judgment and order dated 20.04.2016 made by the learned Sessions Judge at Nagpur in Sessions Case No.348/2014 convicting the appellant for the offense punishable under Section 302 of the Indian Penal Code

(IPC) and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.2,000/- and in default, to suffer rigorous imprisonment for one year.

3. The prosecution version, in this case, is that the appellant on 04.05.2014 at about 11.00 p.m. in the village of Nandgaonmukh, Saoner, Nagpur, intending to cause his death, assaulted one Umakant with a stick/rafter on his head, thereby causing his death. Umakant's mother Kasabai (PW-1) who was sleeping nearby, witnessed this incident and raised an alarm. Ashok Dewalkar (PW-2), Devrao Dewalkar (PW-3), upon hearing the screams of Kasabai (PW-1) reached the spot and they even saw the appellant run away with a stick/rafter in his hand.

4. The charge was framed against the appellant on 20.10.2014 to which he pleaded "not guilty". The prosecution led both oral as well as documentary evidence. The learned Sessions Judge vide the impugned judgment and order has convicted and sentenced the appellant as aforesaid. Hence, the present Appeal.

5. Mr. Kukday, the learned Counsel for the appellant submits that the testimony of Kasabai (PW-1) is riddled with contradictions and therefore, ought not to have been believed. He submits that same is the position with the testimonies of PW-2, PW-3, and other prosecution witnesses. He submits that if the

evidence of Kasabai (PW-1) is discarded, then this is a case of circumstantial evidence and the prosecution has miserably failed in establishing any incriminating circumstances against the appellant.

6. Mr. Kukday, learned Counsel for the appellant submits that there were several persons reportedly at the site on the date of the incident if the prosecution version is to be believed. However, only interested witnesses were examined by the prosecution. Independent witnesses were not examined and for this reason, an adverse inference is liable to be drawn against the prosecution.

7. Mr. Kukday, learned Counsel for the appellant submits that there is no evidence whatsoever on the aspect of motive. There are contradictions in the version of Kasabai (PW-1) and the other witnesses on this aspect. In the absence of motive, conviction under Section 302 of the IPC ought not to be sustained.

8. Mr. Kukday, learned Counsel for the appellant submits that the so-called discovery in the present case is nothing but a sham. He submits that the predicates of Section 27 of the Evidence Act have not been complied with.

9. Mr. Kukday, learned Counsel for the appellant submits that medical evidence, in this case, is also far from reliable, and based on such evidence, it would be unsafe to convict the appellant.

10. Mr. Kukday, learned Counsel for the appellant submits that on all the aforesaid grounds, the impugned judgment and order is liable to be set aside.

11. Mr. M. J. Khan, learned Additional Public Prosecutor defends the impugned judgment and order based on the reasoning reflected therein. He submits that there is no inconsistency whatsoever in the deposition of the material witnesses. He submits that this is the case of direct evidence. He submits that motive has been established but even otherwise the same is quite irrelevant. He submits that the oral evidence, the documentary evidence, and medical evidence establish that the appellant was the author of the crime beyond a reasonable doubt. He, therefore, submits that this appeal may be dismissed.

12. The rival contentions now fall for our determination.

13. This is according to us is not a case of circumstantial evidence because we are quite satisfied with the clear and cogent testimony of Kasabai (PW-1), who according to us, has witnessed

the appellant assaulting the deceased and thereafter running away after Kasabai (PW-1) raised an alarm. Her testimony is substantially corroborated by the testimony of Ashok (PW-2) and Devrao (PW-3), who, on hearing the screams of Kasabai (PW-1), immediately reached the spot and even saw the appellant running away with a stick/rafter. Besides, there is medical evidence coupled with the statement of the appellant pursuant to which the stick/rafter, as well as his blood-stained clothes, were discovered in terms of Section 27 of the Evidence Act. There is evidence of motive as well. But in a case based on direct evidence, the motive is not very relevant. All such evidence, according to us, is sufficient to sustain the conviction of the appellant under Section 302 of IPC.

14. There is no merit in the contention that the testimonies of PW-1, PW-2, and PW-3 should be discarded because they are allegedly interested witnesses. Kasabai (PW-1) is the mother of the deceased. Her presence at the spot and the hour is most natural. There was not even any suggestion put to her about her possibility of implicating the appellant and sparing the real assailant. Similarly, whatever the strained relationship between the appellant's family and PW-2 and PW-3, there was no dispute that PW-2 and PW-3 reside in the houses around the courtyard where the incident took place, and therefore, there is nothing

unreasonable or surprising that these two witnesses rushed to the spot on hearing the screams of Kasabai (PW-1). Therefore, we think that the testimonies of PW-1, PW-2, and PW-3 were quite rightly relied upon by the learned Sessions Judge for convicting the appellant.

15. Kasabai (PW-1) has firstly deposed that in the front of her house, there was a courtyard, beyond the courtyard there was a road and by the side of the road, there was an electric pole. The electric light was affixed to the pole. This part of the evidence is fully corroborated by panchas to the spot panchnama as also the witness, who prepared the sketch of the spot. From this, it is very apparent that the courtyard had the benefit of electric light and PW-1, from her house could witness the deceased sleeping on the strip (Newar) cot hardly 5 ft. away from her, through her house. Though some suggestions were put to Kasabai (PW-1) questioning her eyesight, there was no suggestion about any absence of light or the presence of darkness that might have rendered it difficult for PW-1 to witness the cot on which the deceased was sleeping and how the deceased was assaulted by the appellant on such cot, quite mercilessly with a stick/rafter, killing him on the spot.

16. Kasabai (PW-1) has then deposed about the quarrel between Manikrao and Devrao on 02.05.2014 on account of a

field that they both were claiming. This quarrel was on 02.05.2014 at about 9.00 p.m. Kasabai (PW-1) deposed that her son Umakant was present at the time of such a fight and it was Umakant, who contacted the son of Devrao to inform him about the fight. The prosecution has alleged that there were disputes between the appellant's family members i.e. between Manikrao (father of the appellant) and Devrao (uncle of the appellant). The prosecution has alleged that the appellant regarded the deceased as a supporter of Devrao and therefore, to bore a grudge against him.

17. Kasabai (PW-1) has deposed that hardly two days after the fight i.e. on 04.05.2014, Umakant was sleeping on the cot in the courtyard of her house and she was sitting near the front door of the house applying Vicks ointment to her legs. She deposed that this cot on which Umakant was sleeping was at a distance of about 5 ft. from her. She deposed that she heard some noises at 11.00 p.m. and therefore, looked towards Umakant and saw the appellant giving blows of stick on Umakant's head. She then shouted and the appellant ran away. She deposed that Ashok (PW-2) and 2-3 others reached the spot and together they all noticed that Umakant had sustained bleeding injuries to his head. Umakant was then carried to the Rural Hospital at Saoner in an auto. She deposed that she also accompanied her son Umakant to

the hospital. She deposed that doctor examined Umakant and declared him dead. Kasabai (PW-1) lodged her police report on the morning of the next date i.e. 05.05.2014. She identified the stick by which the appellant assaulted Umakant. She identified Jersey (T-shirt) and the pant i.e. appellant was wearing at that time he assaulted Umakant.

18. Kasabai (PW-1) was extensively cross-examined. Firstly, she deposed that she can hear properly if someone is speaking from a distance of 5 ft. The learned Advocate appearing for the appellant before the Trial Court stood at a distance of 5 ft. to see whether PW-1 could indeed hear him. This is recorded by the learned Sessions Judge in the evidence together with the remark that PW-1 not only heard the learned Advocate but gave a correct answer to the question posed by him.

19. Kasabai (PW-1) has also denied being unable to see from a distance of 5 ft. She admitted that on one occasion, she had been to Ophthalmologist for an examination of her eyes because she was suffering from eye irritation. She stated that this was about 2 to 3 months before the incident and the Doctor has given her some eye drops. She deposed that now she is not having any eye problems and she has even stopped using the eye drops. She denied the suggestion that she is short-sighted.

20. Kasabai (PW-1) was suggested that her son used to consume liquor and pick quarrels with villagers. She was also suggested that her daughter-in-law has demanded a divorce from his son. She denied these suggestions. She stated that the daughter-in-law was residing at Nagpur along with the son of the deceased because of the son's education. Kasabai (PW-1) denied the suggestion that her son on the date of the incident had attended a party at Devrao's house.

21. Kasabai (PW-1) reiterated in her cross-examination that in front of her house, there is a platform and besides it, there is an electric pole. She deposed very cogently to the location of her house, the houses of her neighbors, the courtyard in front of the house, the position of the cot on which her son was sleeping, and such other factors. Kasabai (PW-1) was sought to be confused by persistent questions about certain directions. She was sought to be confused by interchanging the phrases of courtyard and platform. She has substantially withstood the cross-examination. Some amount of confusion about directions is quite understandable having regard to the fact that Kasabai (PW-1) was 70 years old and a rustic witness. Such confusion makes no dents whatsoever to her clear and cogent testimony as to the material facts. Such confusion or such trivial and minor discrepancies lend

credence to such testimony as being the hallmarks of truth. Therefore, there is no case made out to discard the clear and cogent testimony of Kasabai (PW-1), an eyewitness to the incident.

22. As noted earlier, the testimony of Kasabai (PW-1) has been corroborated by independent evidence in the form of the spot panchanama or the sketch of the site where the incident took place. Independent witnesses have also deposed to the site conditions, including the location of the houses, the courtyard, the electric pole, the distance between the door of Kasabai's house where she was sitting at the time of the incident and the cot on which the deceased was sleeping when he was brutally assaulted with stick/rafter. Kasabai (PW-1) has also deposed about how she shouted on witnessing the appellant, who was very well known to her, brutally assaulting her son. Kasabai's statement was also recorded under Section 164 of the Criminal Procedure Code before the Magistrate. This statement also corroborates her testimony before the Court. These are good and weighty reasons for relying on the testimony of Kasabai (PW-1), an eyewitness to the incident.

23. There is no case whatsoever made out to discard the evidence of Kasabai (PW-1) on the ground that she is an

interested witness. As noted earlier, she was the most natural witness at the spot and her conduct was also quite natural in the circumstances. There was no reason suggested by the defense as to why Kasabai (PW-1) would want to implicate the appellant and spare the actual culprit, who murdered her son. In this case, there is no dispute whatsoever that the death of Umakant was homicidal resulting from stick/rafter blows on his vital organs i.e. his head. From the nature of injuries sustained by Umakant, it is evident that he was assaulted with a stick/rafter on his head, resulting in his death on the spot.

24. Kasabai (PW-1) in her chief-examination deposed about the incident of 02.05.2014 i.e. the quarrel between Manikrao (father of the appellant) and Devrao (uncle of the appellant). She deposed that Umakant was present at that time and he contacted Devrao's son on mobile phone and gave information about the fact. However, in her cross-examination, she stated that her son did not make the telephone call to Manohar Deolkar in her presence. According to us, nothing much turns on this aspect. This is because there is other evidence on record establishing the inimical relationship between Manikrao and Devrao. Even the Investigating Officer deposed about the non-cognizable complaint filed on account of such disputes. Based on such minor variations, neither is any case made out to discard the clear and cogent

testimony of Kasabai (PW-1) nor to question the motive suggested by the prosecution in this matter. Besides, since this is a case of direct evidence, the issue of motive is not very relevant.

25. The evidence of Ashok (PW-2) and Devrao (PW-3) not only corroborates the evidence of Kasabai (PW-1) but also incriminates the present appellants. These two witnesses have deposed to the family disputes. Ashok (PW-2) has deposed that he returned to his house at about 10.00 p.m. and at about 11.00 p.m. he heard Kasabai's screaming. He deposed that Kasabai was screaming about the appellant having assaulted her son. He deposed that on hearing the screams, he came out of the house and saw Vinod running with a stick. He deposed that the stick was like a rafter and about 4 ft. in length. He also deposed that the appellant was wearing a red-colored T-shirt and full pants. He identified the stick as well as the clothes that the appellant was wearing at the time of the incident. He then deposed that he went towards Umakant, who was lying on the cot, and found that blood was oozing from the head of Umakant. He also deposed that the Kasabai was weeping and saying that the appellant had assaulted her son. He then deposed that Umakant was taken to Saoner Hospital by auto along with Kasabai, Nilesh, Bhupendra, and himself. He deposed that the doctor at Saoner Hospital declared Umakant as dead.

26. There was no dent whatsoever in the clear testimony of Ashok (PW-2) during the cross-examination. There were some vague suggestions put about frequent power cuts in the village. There was only one suggestion about there being darkness near the house of Kasabai (PW-1). There was some confusion about the directions of the doors of the houses or the locations of the houses. Ashok (PW-2) reiterated that his house is quite close to the house of Kasabai and Umakant. He deposed that one side of his house, there is the house of Devrao (PW-3) and on the other side, there is the house of Umakant and Kasabai (PW-1). Ashok (PW-2) denied the suggestion that the distance between his house and the house of deceased Umakant and Kasabai was about 300 meters.

27. Ashok's statement was also recorded under Section 164 of the Criminal Procedure Code. This statement offers corroboration to his deposition before the Court. Having regard to the provisions of Sections 6 and 8 of the Evidence Act, the evidence of Ashok (PW-2) was quite relevant and quite correctly relied upon by the learned Sessions Judge.

28. Devrao (PW-3) has also deposed that his house was in the neighborhood of the house of the Umakant and Kasabai (PW-1). He has also deposed as to how he heard Kasabai's

screams that the appellant had assaulted her son Umakant and how he along with his son and Ashok ran towards the house of Umakant. He has also deposed that he saw the appellant running away towards his house holding a stick in his hand and wearing a red T-shirt. He has identified the stick and the red T-shirt in the Court. Again, in the cross-examination, no serious dent was made to the testimony of PW-3 though, suggestions were put about the inimical relationship between his family and the family of the appellant. Based on such suggestions, there is no good ground to reject the clear and cogent testimony of PW-3, which again assumes relevance having regard to the provisions of Section 6 and 8 of the Evidence act.

29. In this case, the appellant stated while in police custody based upon which, the stick/rafter and the clothes, which he was wearing at the time of the incident were recovered. The C. A. Report establishes the presence of human blood both on the stick as well as on the clothes. Dr. Ashish Bhagat (PW-5), who prepared the post-mortem report has deposed that the injuries caused to the deceased were possible with a stick/rafter that was shown to him. He has deposed that such a query was raised and he had answered it similarly in his query report (Exh.46). He has deposed that the injuries mentioned in the post-mortem report were sufficient to cause the death in the ordinary course of nature. Thus, it is quite

clear that the blood-stained stick/rafter and the blood-stained clothes that the appellant was wearing at the time of the incident, constitute incriminating articles. So much portion of the appellant's statement leading to the discovery of such incriminating articles was certainly admissible under Section 27 of the Evidence Act. This offers further corroborations assuming that the same was necessary after the clear and cogent testimony of Kasabai (PW-1) in this matter.

30. Learned Sessions Judge, in this case, has evaluated the evidence on record by applying the correct principles and we see no reason to interfere with the impugned judgment and order. In this case, we have also independently evaluated the evidence on record and are quite satisfied that the prosecution has established its case beyond a reasonable doubt.

31. For all the aforesaid reasons, we dismiss this appeal. There shall be no order for costs.

32. Pending application(s), if any, stand(s) disposed of.

(PUSHPA V. GANEDIWALA, J.)

(M. S. SONAK, J.)