

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.700 OF 2014

1. Santosh Dattu Pawar
Age : 26 years, occ : nil
R/o Yeola Road, Behind
Mayureshwar Ganpati Temple,
Kopargaon, Dist. Ahmednagar.

2. Dattu Baburao Pawar
Age : 56 years, occ : nil
R/o Yeola Road, Behind
Mayureshwar Ganpati Temple,
Kopargaon, Dist. Ahmednagar.

Appellants

Versus

The State of Maharashtra

Respondent

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Mr. N.S. Ghanekar, Advocate for the appellants.
Mr. S.D. Ghayal, A.P.P. for respondent – State.

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**CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

Reserved on : 10-01-2022.

Pronounced on: 10-02-2022.

JUDGMENT (Per Sandipkumar C. More) :

1. This is an appeal by the appellants who are the original accused, against the judgment and order passed in Sessions Case No. 58/2013 dated 18.04.2014 by the learned Additional Sessions Judge, Kopargaon (hereinafter referred to

as the “trial Court”). Under the impugned judgment, both the appellants have been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short “I.P.C.”). Accordingly both of them are sentenced to suffer imprisonment for life each and to pay fine of Rs. 5,000/- each, in default to suffer rigorous imprisonment for one year each.

2. The appellants – accused are in jail since their arrest made on 01.04.2013 in this crime.

3. The story of the prosecution, in nutshell, is as under :

Appellant No. 2 Dattu is the father of appellant No.1 Santosh and both of them used to reside in the locality behind Mayureshwar Ganpati Temple at Kopargaon. One Vilas Balkrishna Bhoir i.e. the deceased in this case alongwith his son Ganesh i.e. another deceased in this case, used to reside in the same locality as that of the appellants. The houses of the appellants and deceased persons were near to each other. The appellants always used the lane aside the house of Vilas Bhoir for urinating. On that count there were frequent quarrels between the appellants and Vilas Bhoir. On

31.03.2013 at about 8.30 p.m. appellant No. 2 Dattu had gone to the said lane behind the house of Vilas to pass urine. However, Vilas obstructed appellant No. 2 and tried to persuade appellant No. 2 for not to do so. On that count, there was quarrel between them. At the relevant time, Ganesh i.e. the son of Vilas had also come out of the house and tried to persuade appellant No. 2 Dattu. However, Dattu started abusing them. On hearing the said quarrel, appellant No.1 Santosh i.e. the son of appellant No. 2 Dattu came out from his house with an axe. Appellant No. 1 Santosh started abusing Vilas and Ganesh and also assaulted Ganesh with the help of the said axe. He gave blows of the said axe on the head of Ganesh, and therefore, Ganesh fell down on the spot being unconscious. Simultaneously appellant No. 2 Dattu had also rushed to his house, brought sickle and gave blows of that sickle on the head of Vilas. Due to those blows Vilas sustained bleeding injuries on his head, and therefore, he called his another son Kailas @ Pappu residing in Ambika Nagar locality. Kailas then with the help of neighbours and friends shifted Vilas and Ganesh in injured condition to Kopergaon Rural Hospital. The Medical Officer present in the said hospital, after noticing the injuries being of serious nature, asked them to shift Vilas and Ganesh to Saibaba

Superspeciality Hospital, Shirdi immediately. Accordingly both the injured were shifted to said hospital at Shirdi. Meanwhile Kopargaon police had also got information of the said incident through a memo received from the Medical Officer. As such, Police Inspector of Kopargaon Police Station deputed A.P.I. Rahul Pawar to attend the hospital at Shirdi for recording statements of both the injured persons.

4. A.P.I. Rahulkumar Dattatraya Pawar i.e. PW-1 visited the Saibaba Super-speciality Hospital at Shirdi and on making enquiry with the Medical Officer on duty, he learnt that only Vilas Bhoir was in a position to speak and capable of giving statement. Ganesh Bhoir was still unconscious at the relevant time. Therefore, A.P.I. Rahul Pawar recorded statement of Vilas in presence of Medical Officer. On the basis of the said statement, A.P.I. Rahul Pawar registered Crime No. 111/2013 initially for the offences under Sections 307 and 504 read with Section 34 of I.P.C. at about 1.45 hours on 01.04.2013. However, in the morning of that day Vilas succumbed to the injuries sustained by him. Another injured Ganesh also died thereafter on 03.04.2013. Therefore, the crime against the appellants was converted into under sections 302, 201 read with Section 34 of I.P.C.

5. After registration of F.I.R. at the hands of A.P.I. Rahul Pawar, the then Police Inspector Madhukar Auti of Kopargaon Police Station started investigation. During investigation he got prepared inquest panchanama over the dead body of Vilas with the help of local police by deputing A.S.I. Dhawale. He also prepared spot panchnama in presence of panchas as per Exh.28. He collected blood mixed soil and ordinary soil alongwith other articles found on the spot and in the house of deceased under the same panchnama. He also seized clothes of deceased Vilas under panchnama Exh.29. He then recorded statements of witnesses and collected medical certificates from the Medical Officer, Rural Hospital, Kopargaon alongwith postmortem reports of deceased persons. Clothes of other deceased were also seized under panchnama. He then effected arrest of both the appellants. On 03.04.2013 appellant No. 2 Dattu made disclosure statement for production of clothes which he had worn at the time of incident. Accordingly, by recording such statement, Investigating Officer recovered those clothes from the house of appellants at the instance of appellant No. 2 Dattu, which were kept in polythene bag under a wooden cot and prepared panchnama to that effect which is at Exh. 30. On 04.04.2014 appellant No. 1 Santosh, while in police

