

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

CRIMINAL APPEAL NO. 442 of 2019

Ananda alias Anna Tukaram Bargule

..Appellant.

Versus

The State of Maharashtra

..Respondent

Mr. Amit Mane for Appellant.

Ms. G. P. Mulekar, APP for State/Respondent.

**CORAM : S. S. SHINDE AND
SARANG V. KOTWAL, JJ.**

DATE : 05th APRIL 2022.

JUDGMENT: (*Per Sarang V. Kotwal, J.*)

1. The appellant has challenged the Judgment and order dated 14/02/2019 passed by the Additional Sessions Judge, Sangli in Sessions Case No.104 of 2016. Appellant was the sole accused in that case. At the conclusion of the trial he was convicted for commission of offence punishable U/s.302 of the Indian Penal Code and was sentenced to suffer imprisonment for life and to pay a fine of Rs.10000/- and in default of payment of fine to suffer S.I. for six months. The appellant was acquitted of the charges of commission of offence punishable U/s.506 of IPC. He was granted

set off U/s.428 of Cr.p.c.

2. Heard Shri. Amit Mane, learned counsel for the Appellant and Ms. Mulekar, learned APP for the State.

3. The prosecution case is that the applicant was serving as C.R.P. F. Personnel and used to visit his village once in 2 to 3 months. He was having suspicion against the deceased Mahesh because Mahesh used to send messages to the appellant's wife. On 21.04.2016, the appellant committed Mahesh's murder by assaulting him with scythe. His cousin Vijay Bargule lodged the F.I.R. The investigation was carried out and the appellant was arrested. On the conclusion of the investigation chargesheet was filed and the case was committed to the court of sessions.

4. During trial the prosecution examined eight witnesses. Out of them four witnesses were eye witnesses. Two eye witnesses turned hostile. The prosecution case rested on the evidence of the remaining two eye witnesses who are sister and father of the deceased Mahesh.

5. Learned counsel for the appellant submitted that both

these eye witnesses were got up by the police because there was no material against the appellant. The statements of these two eye witnesses were recorded on 24/04/2016. There was no plausible explanation as to why their statements were not recorded earlier, though both of them were very much available in the village when the police were making inquiry about the incident. Other eye witnesses did not speak about their presence. He further submitted that there was contradiction in identification of the article scythe produced in the court. There is no corroborative piece of evidence in the form of C.A. report etc, therefore, it was not safe to rely only on the evidence of the two eye witnesses whose evidence was doubtful in nature. He relied on certain judgments. Those will be referred to in the following discussion.

6. On the other hand, learned APP submitted that there was no delay in recording the statements of those eye witnesses. Considering that PW-1 had lost her brother and PW-7 had lost his son, it was not expected that they would give their statements immediately and, therefore, on humanitarian ground, police waited for four days to record their statements. The accused was

already named by other eye witnesses in the meantime. Therefore, investigation was proceeding on the right track. She submitted that, motive is sufficiently established and the prosecution has proved its case beyond reasonable doubt.

7. We have considered these submissions and with the assistance of both learned counsel we have perused the evidence and the impugned Judgment.

8. The prosecution has examined PW-4 Dr. Sunil Patil to prove the injuries suffered by the deceased. This witness had conducted Postmortem examination. He had found 10 injuries on the dead body. They are in the nature of incised wounds and CLWs. Apart from some abrasions, major injuries were on the head. There was one incised wound on the left side of occipital bone admeasuring 8 cm. x 2cm x 4cm. There was another incised wound on the right side of face admeasuring 15cm. x 2.50cm x 4cm. from mid of forehead to right ear pinna with bleeding. There was one C.L.W. on the left side of chin admeasuring 2.5cm. x 0.5cm. x 0.5c.m. There was an incised oblique wound at right

scapula near medial border admeasuring 6cm. x 3cm. x 1cm. There was another incised wound on the left arm. There was C.L.W. on the left wrist and abrasions and other C.L.Ws. The cause of death was mentioned as “death due to head injury”. Thus, from this evidence it is clear that the deceased had died homicidal death and he was brutally assaulted with a sharp weapon on his head, face and other parts of the body.

9. To prove it's case, the prosecution has relied on the evidence of PW-1 Mahadevi Patil and PW-7 Ramchandra Bargule. PW-1 Mahadevi was the sister of the deceased. She has stated that the appellant was her distant cousin. His family resided in the neighbourhood of PW-1's parent's house. The appellant used to serve in C.R.P.F. at Gadchiroli as a police constable. He used to visit home at Morale for a month's holiday after every two to three months. Mahesh was her brother. Mahesh and the appellant were friends. However, subsequently there used to be quarrels between them. On one occasion the appellant had beaten Mahesh and his own wife because he was suspecting their affair. The appellant's wife had even tried to commit suicide. After that, a meeting was

held between the elders and it was decided that the quarreling parties would keep peace and the dispute was settled. According to this witness, in spite of this settlement the appellant and his brother used to threaten Mahesh. The incident in question took place on 21/04/2016. This witness had come to visit her parents for some religious ceremony. The incident had taken place at 5.00p.m. At that time, she was present in front of her house. She was feeding her children on a cot in the courtyard. Her father was giving fodder to his cattle. She saw that Mahesh and the appellant were talking with each other under a Neem tree next to their house. Suddenly she heard the shouts of Mahesh. She saw that Mahesh was lying on the ground and the appellant was assaulting him by scythe. PW-1 started shouting. She rushed towards Mahesh. When she reached there, the appellant dropped his scythe at the spot and ran away. She was followed by her father Dhanaji Bargule and one Vijay Bargule. Persons from the neighbourhood gathered at the spot. Somebody got a vehicle and Mahesh was taken to Manjarde hospital and thereafter he was taken to Sangli Civil Hospital. However, on the way Mahesh succumbed to his injuries.

After four days of the incident, her statement was recorded by the police. She has stated that, last rites were performed for three days and then her statement was recorded on the 4th day. She had identified the weapon scythe which was produced on record as Article 1.

In her cross-examination, she has deposed that, since about 5 to 6 months before the incident there was hardly any interaction between the appellant and the deceased. The appellant had not attended the religious function on 19/04/2016 in her parent's house. At the time of the incident, the appellant and Mahesh were talking with each other for about half an hour and then the appellant assaulted the deceased. Some questions were put to her in the cross-examination as to whether police inquired with her how the weapon was brought by the appellant. She did not know about it. She had also told the police about parts of the body where blows were given, but it was not mentioned in her statement. Further cross-examination was regarding the delay in recording her statement. She has stated that, on 21/04/2016 police had come to Bargule vasti. They did not come to their house

on 22/04/2016. They had recorded statements of some persons from the Bargule vasti on 23/04/2016. On 24/04/2016 she herself had gone to the police station and there her statement was recorded. She admitted that, between 21/04/2016 and 24/04/2016 she did not discuss this incident with anybody and till then even police had not made inquiries with her. Apart from this cross-examination, she denied all other suggestions.

10. PW-7 Ramchandra Bargule was father of the deceased Mahesh. He has narrated the incident and background of the case in the same manner as narrated by PW-1. At that time, he was near his house and was feeding his cattle. He has described the incident in the same manner as is described by PW-1.

In the cross-examination he has admitted that, he had no personal knowledge about the messages sent by the deceased to the appellant's wife. The police had come for inquiry in the hospital. This witness was in the hospital. According to PW-7, he had discussed about the incident with the police in the hospital.

11. Apart from these two eye witnesses, there are two more

eye witnesses examined by the prosecution, but they turned hostile.

12. PW-3 Vijay Bargule was, in fact, the first informant, but he has not supported the prosecution case. He was cousin of both; the appellant and the deceased. Since his answers in his examination in chief were not in consonance with the F.I.R., he was cross-examined by the learned APP after seeking permission from the court. He was asked about the portions in his F.I.R. which are marked as Portion marked "A" and "B". Those portions were duly proved through the evidence of the investigating officer i.e. PW-6 Sachin Vasmale, PSI, attached to Tasgaon police station, who had recorded the F.I.R. He has stated that, on 21/04/2016, Vijay Bargule had come to the police station and had lodged his F.I.R. He had told the police that the appellant had assaulted the deceased by Koyta. The portion marked 'A' and 'B' from his F.I.R. were duly proved through this witness PW-6. The F.I.R. was marked as Exhibit 40 and those portions were marked as Exhibit 40-A and 40-B. Since this F.I.R. and relevant portions from the F.I.R. are proved through this evidence, the said portions can be referred to.

In those parts of the F.I.R., it is mentioned that there was dispute between the deceased and the appellant, because the appellant was suspecting some affair between his wife and the deceased. In the past also he had assaulted the deceased and his wife and because of that, the appellant's wife had tried to commit suicide. After that, there was some settlement, but no complaint was made to the police station. PW-3 Vijay Bargule himself was aware of those facts. On the date of the incident he had come near the house of deceased. At that time, one Dhanaji called him. They stopped near that spot. They were talking with each other. At that time, Vijay Bargule saw the appellant and the deceased discussing something. Dhanaji told this witness that he was not aware of subject of the discussion. They were having some secret discussion. Suddenly they heard shouts from Mahesh. They looked at the spot. They saw that the appellant was assaulting the deceased with scythe on his head and on the other parts of the body. Vijay and Dhanaji went there and caught the appellant. However, he escaped from there and ran away. He left the weapon at the spot. The neighbours gathered there and then Mahesh was taken to the

hospital. Thus, though this witness Vijay has not supported the prosecution case, his F.I.R. and concerned portions from the F.I.R. are duly proved by the prosecution through the evidence of I.O.

13. PW-5 Dhanaji Bargule was referred to by the first informant Vijay in his F.I.R. PW-5 also turned hostile. His contradictory version mentioned in his police statement which was supporting the prosecution case was put to him. He was confronted by referring to portions. Those portions were duly proved through the evidence of PW-8 Mohamad Shaikh, PSI who had recorded the statements U/s.161 of Cr.p.c. Those two portions substantively matched with the story of the prosecution as deposed by PW-1 and PW-7.

14. PW-2 Sajan Bahure was a pancha for various panchanamas viz. Spot panchanama, seizure panchanam under which clothes of the accused were seized and the panchanama under which clothes of the deceased were seized. However, since the C.A. report is not produced on record, his evidence is not helpful to the prosecution case.

15. PW-8 Mohamad Shaikh is the P.S.I. who had conducted the investigation. He had recorded the statements of witnesses. He has supervised the panchanamas. He collected the postmortem report. The important feature in his cross-examination is that, he had explained the specific question asked to him in the cross-examination as to whether he had any problem in recording the statements of PW-1 and PW-7 on 22/04/2016 and 23/04/2016. To this, he specifically answered that, he was not having any problem in recording their statements, but he did not feel it proper as their mental condition was disturbed. He deposed that on 24/04/2016 he had not given any notice to these two witnesses to come to the police station for recording of their statements. This, in short, is the evidence brought on record by the prosecution.

16. Learned Judge relied on the evidence of PW-1 and PW-7 to convict the appellant. After giving due consideration to this evidence, we also agree with the learned Judge in his conclusion. We find that, evidence of PW-1 and PW-7 is quite reliable. There is no reason to disbelieve their evidence. They were natural witnesses. The incident had occurred near their house at around

5.00p.m. when they were present near the spot. There is hardly any infirmity in the evidence. They have described the dispute between the appellant and the deceased. They have described the incident in detail. The submission of learned counsel for the appellant that, PW-1 had not mentioned in her statement, on which part of the body blows were given; does not carry much weightage because in that state of mind it was not expected that she could describe these details. The injuries were confirmed by the postmortem.

17. Learned counsel for the appellant relied on the Judgment of the Hon'ble Supreme court in the case of *State of Orissa Vs. Brahmananda Nanda*¹ to contend that delay in recording the statement of eye witness badly affects the prosecution case. We have perused that Judgment. In that case the eye witness had not named the accused as the assailant for a day and a half. The Hon'ble Supreme court had observed that, it was not possible to accept the explanation given by the prosecution that the said witness did not disclose the name of the accused on account of

¹ Criminal Appeal No.283 of 1971 decided on 31/08/1976.

fear of the respondent. Hon'ble Supreme court held that, there could be no question of any fear from the accused because he was not known to be a gangster or a confirmed criminal about whom people would be afraid. The police had already arrived at the scene.

These reasons are specific to the facts before the Hon'ble Supreme Court. In the present case, the prosecution has explained that the I.O. did not record the statements of PW-1 and 7 before 24/04/2016 because they were not in a proper state of mind. PW-1 had lost her brother and PW-7 had lost his son.

18. Learned counsel for the appellant relied on another Judgment of the Hon'ble Supreme Court in the case of *State of U.P Vs. Satish*². He relied on this case to contend that some delay in recording statement of eye witnesses, affects the prosecution case. In that case, the Hon'ble Supreme court had observed that, unless the I.O. is categorically asked as to why there was delay in examination of the witnesses, the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal

2 Criminal Appeal Nos.256-257 of 2005 decided on 08/02/2005.

application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion of conviction.

Applying these guidelines in this particular case before us, the prosecution has explained as to why statements of these were not recorded immediately. The explanation is plausible and acceptable to us. Therefore, relying on this Judgment itself, we are satisfied that recording of these witnesses' statement on 24/04/2016 does not affect the prosecution case.

19. Learned counsel for the appellant has made alternate submissions. He submitted that the incident had occurred on a spur of the moment because of sudden quarrel. There was no premeditation and preparation on the part of the appellant. Therefore, the offence would not fall within the definition of section 300 of IPC. It would be a much lesser offence. He relied on

the Judgment of Hon'ble Supreme court in the case of *Shahajan Ali and Ors. Vs. State of Maharashtra and Ors.*³. In that case an altercation took place during discussion, where the deceased was assaulted by the accused with a knife. In that case, the Hon'ble Supreme Court had observed that, the case would fall within Section 304-II of IPC and not U/s.302 of IPC. In the facts of that case, the Hon'ble Supreme Court had held that, there was no prior concert or intention to commit murder.

However, in the present case before us, it is clearly established that the appellant had called the deceased for discussion near the spot, the appellant had carried a deadly weapon i.e. scythe with him, therefore, he had come there with preparation, premeditation and with definite intention to commit murder of the deceased. There was strong motive behind this act. Therefore, it cannot be said that the offence would fall within the meaning of Section 304 Part-I or 304 part-II of IPC. The deceased was assaulted brutally and he had suffered many injuries including some injuries on vital parts because of scythe. This case squarely

3 Criminal Appeal Nos.458-459 and 430 of 2014 decided on 23/05/2017.

falls within the meaning of 'murder' defined under Section 300 of IPC.

20. Thus, considering this discussion, we are satisfied that the evidence of eye witnesses is cogent and reliable. The prosecution has established its case beyond reasonable doubt. The weapon was found at the spot. There was no infirmity in the depositions of PW-1 and PW-7. Even PW-3's immediate version in the F.I.R. is consistent with the deposition of PW-1 and PW-7.

21. Considering all this discussion, we do not find merit in the appeal. The Appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)