

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1151 OF 2012

Laxman Bapu Khandale,)
Age : 51 years, Occ : __,)
Residing at Pimpaler, Taluka) ...Appellant
Madha,) (Orig. Accused
District Solapur.) No. 5)
(At present in Solapur Jail))

Versus

The State of Maharashtra) ...Respondent

Mr. Yashpal Thakur a/w Mr. Mukund Pandhya for the
Appellant.

Mr. H. J. Dedhia, APP for Respondent – State.

CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.

DATE : JULY 13, 2022

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Additional Sessions Judge, Solapur in Sessions Case No. 90 of 2011 whereby the present Appellant – Original Accused No. 5 was charged for commission of offences punishable under Sections 302 of the Indian Penal Code (for short 'IPC'), convicted and awarded sentence rigorous imprisonment for life, filed the present Criminal Appeal.

2. The case of prosecution, in brief, can be summarized as under:

A report came to be lodged at the instance of Vithal Tatya Khandagale (PW 8) on 24th December, 2010 and the same was registered as Crime No. 181 of 2010. The incident in question took place at 06.00 pm when complainant, his wife and sons along with their wives were present in front of his house. At that time, all the accused persons reached the place having dangerous weapons in their hands, namely, sword, axe, sickle etc. and they started abusing and threatening Vithal and his family members and Madhukar pelted stones upon the house of Vithal. Though complainant Vithal and his family members requested the accused persons not to raise quarrel, but, no heed was paid, on the contrary, present Appellant, who was armed with sword, laid an assault on Madhukar. The sword hit Madhukar's throat due to which Madhukar fell down. As per the report, other accused persons also played active role such as, Rafiq (A 1) gave blow of sword on the head of Madhukar, Mahendra (A 2) hit Vithal by stones on his chest, when Vithal trying to pacify them. Then all the accused

persons fled away from the spot. Madhukar was immediately brought to one private hospital at Kuruduwadi in serious condition, however, doctor refused to provide treatment to Madhukar, as such, Madhukar was brought to Barshi in Jagdale Mama Hospital. Unfortunately, Madhukar lost his life before he could get any medical assistance. Then Madhukar was brought to Kurudwadi Rural Hospital where doctor examined Madhukar and declared him dead. Thereafter, report was lodged to Kuruduwadi Police Station.

3. Though the incident of assault took place at 06.00 pm, there was a prequel to this incident which took place in the afternoon. In the said village there was a women saving society (महिला बचत गट). As the nomenclature of the society suggest that this society collects contribution in the form of savings from the members and advance loan to needy members of the society. One Santosh Khandale (PW 10) is the nephew of Vithal Khandagale (PW 8) and his wife Pushpa (PW 9) is the president of said women saving society. Wife of accused no. 1 – Rafiq, namely, Shantabai was a member of the said group and she had obtained loan from the

said group. On 24th December, 2010 at about 2.00 pm Santosh Khadale (PW 10) and Pushpa (PW 9) had been to the house of accused no. 1 so as to demand the amount of loan disbursed to his wife. Act of demanding the loan amount was not welcomed by Accused no. 1 and his wife Shantabai and they picked up quarrel with Santosh and Pushpa. Accused no. 1 and his wife gave fist and kick blows to Santosh and Pushpa. Thereafter, Santosh and Pushpa lodged report of the said incident in the police station and returned back to their village. Brother of Vithal, namely, Nagnath intimated this fact to Vithal who was working in the field. After his return to home, Vithal made inquiry with Santosh about the incident. Santosh narrated the said incident to Vithal. Thus, it seems that the prosecution case refers the afternoon as backdrop wherein accused no. 1 was carrying grudge against nephew of the complainant.

4. Santosh and other relatives of Vithal were residing nearby. When accused person reached the house of Vithal so as to teach the lesson to Santosh and when other family members of Vithal and his son made an attempt to pacify the accused persons, the accused

persons were not in mood to hear Vithal and his family members and they proceeded further and laid an attack on Vithal and Madhukar.

5. Now, on receipt of the report, the investigating agency was set in motion. The necessary formalities of investigation, such as, drawing inquest panchnama, referring body for postmortem, recording statement of material witnesses were completed. During the course of investigation, incriminating articles such as, weapons were recovered from the accused persons. Weapons and clothes worn by deceased and accused persons were referred for chemical analysis. Chemical analysis reports were obtained. On completing the exercise, charge-sheet came to be filed before the learned JMFC. As the charges leveled against the accused persons being exclusively triable by the Court of Sessions, learned JMFC committed the case to the Court of Sessions. The statement under Section 313 of Code of Criminal Procedure, 1973 of accused persons were recorded. The defence of all accused persons was of total denial and false implication. The learned Sessions Judge, on appreciation of evidence, framed as

many as 9 points for determination and had drawn an ultimate conclusion that the prosecution proved its case for commission of offence under Section 302 of IPC only against present Appellant. Hence, this Appeal.

6. Learned appointed Counsel appearing for Appellant vehemently submitted that the learned Sessions Judge failed to appreciate evidence in proper perspective. It is submitted that there are serious infirmities in the prosecution case. It is further submitted that when the learned Additional Sessions Judge on the same set of material evidence acquitted other accused persons, the learned Sessions Judge ought not to have used this set of evidence against present Appellant to record finding of guilt and to award conviction and sentence. It is also submitted that the medical evidence is not supporting the case of prosecution. It is further submitted that though the investigating agency recorded statement of certain witnesses during the course of investigation and though they are part of investigation papers, the prosecution purposely avoided to bring these witnesses before the Court as such, prosecution only brought one side of the

case. It is further submitted that the so called eye witnesses are the nearest relative of the deceased as such, they are interested witnesses, therefore, no reliance can be placed on these witnesses. It is further submitted that the recovery of weapon is also doubtful as the said weapon was recovered from field as such, the place is open and accessible to anyone. In support of his submissions, learned Counsel placed reliance on following judgments: Ram Narain Singh and Ors Vs. State of Punjab¹, Amar Singh and Ors Vs. State of Punjab², Anil Phukan Vs. State of Assam³, Piara Singh and Ors. Vs. State of Punjab⁴, Vinod Pandurang Dhumal Vs. The State of Maharashtra⁵, & Ravi Subhash Naik Vs. The State of Maharashtra⁶. Thus, learned Counsel appearing for Appellant prayed that Appeal may be allowed.

7. *Per contra*, learned APP supported the judgment. Learned APP vehemently submitted that all the eye witnesses gave the truthful account of incidents.

1 AIR 1975 SC 1727

2 AIR 1987 SC 826

3 AIR 1993 SC 1462

4 AIR 1977 SC 2274

5 MANU/MH/3669/2021

6 MANU/MH/0464/2022

The version of these eye witnesses inspires confidence of Court. Minor omissions in the version of these witnesses cannot discard the entire case of prosecution. It is also submitted that merely because the witnesses are nearest relatives of the deceased their testimony they cannot be treated as interested witnesses, on the contrary, the witnesses were the natural witnesses. Learned APP further submitted that the recovery of a weapon sickle at the instance of Appellant is not from an open place, however, the weapon was recovered from a place beneath Neem tree in the field. Thus, the weapon was concealed beneath tree and the place hiding the weapon known only to Appellant and by following due procedure of law, the weapon was recovered, as such, the recovery cannot be doubted. Learned APP also submitted that the other scientific material in the form of CA report supports the case of prosecution. Thus, learned APP prayed for dismissal of the Appeal.

8. With the assistance of both the learned Counsel, we have gone through the material brought on record.

9. Now, it can safely be said that 2 points falls for our consideration, firstly, whether the death of deceased was homicidal one or not? and secondly, whether the prosecution established its case beyond reasonable doubt that the Appellant is the author of the crime?

10. On perusal of the evidence, in our opinion, the prosecution was successful in bringing the evidence before the Court so as to record an affirmative finding on both the points.

11. Firstly, we consider the issue that the death of Madhukar being natural or unnatural i.e. homicidal one or not?

12. In so far as the first point is concerned, we may refer to the evidence of Dr. Dayanand Shinde (PW 13) firstly. This witness deposed that on 25-12-2010 he was attached to Rural Hospital, Kuruduwadi as Medical Officer. The dead body of Madhukar Khandale was referred to him by Kuruduwadi Police for postmortem on 25-12-2010 at 08.30 am and he completed the same at

09.30 am. He found following injuries on deceased:

1. *Right grate toe nail avulsion with abrasion 2 x 1 cm superficial;*

2. *Stab wound wedge shaped over left side of neck, 2 cm below the angle of mandible, 5 cm from center of trachea placed obliquely, 2 cm wide, 2 cm length, sub muscular deep;*

Inner end was sharp and outer blunt, lower margin was undermined, track established on left side of neck into the sub muscular area of neck and deep into the vessel of neck.

Left side of carotid artery found ruptured in the direction of track; large haematoma seen in the bed.

This witness opined that the cause of death of Madhukar was hemorrhage and shock due to ruptured of carotid artery.

13. It is not in dispute that there are three eye witness to the alleged incident and the overt-act of Appellant was seen by these three witnesses. The autopsy surgeon, after internal and external examination of dead body, had come to the conclusion that the deceased died due to hemorrhage and shock due

to ruptured of carotid artery. (Unnatural). He further opined that, the injuries found on the person of deceased were sufficient to cause death in ordinary course of nature.

Considering the above referred evidence, we are of the opinion that deceased died homicidal death.

14. Now the another issue falls for our consideration is, whether prosecution proves that Appellant had committed murder of Madhukar?

15. It is not in dispute that eye witnesses, namely, Vithal (PW 8) – Complainant, Pushpa Khandale (PW 9) and Santosh Khandale (PW 10) were present on the spot since beginning. It is also not in dispute that these eye witnesses are subjected to detailed cross-examination and version of these eye witnesses are unshaken. Learned APP was justified in submitting before this Court that weapon which was used by the Appellant was recovered from a place beneath Neem tree in the field. Thus, the weapon was concealed beneath tree and the place hiding the weapon known only to Appellant. Therefore, the recovery of weapon cannot be

doubted.

16. At the cost of repetition, we may state that these three eye witnesses are the neighbour of deceased and the star witness of prosecution. These witnesses clearly stated before the Court that the Appellant assaulted the deceased by means of sickle.

17. Considering the above referred evidence, we are of the considered opinion, that it was the solitary act of the Appellant and Appellant is the only author of the crime. The version of the above referred eye witnesses are consistent, reliable, trustworthy and unshaken. Even for the sake of moment, if we consider the submission of learned Counsel for Appellant that there are omissions in the version of these eye witnesses, in our opinion, these omissions are minor in nature and are not fatal to the case of prosecution. Learned Trial Court was justified in holding the present Appellant guilty for the offence punishable under Section 302 of IPC.

18. Considering the evidence brought on record, we are unable to accept the submissions of learned Counsel

for the Appellant and we find considerable merit in the submissions of learned APP. Thus, Appeal is devoid of merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(SHRIKANT D. KULKARNI, J)

(PRASANNA B. VARALE, J)