

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

CRIMINAL APPEAL NO. 84 OF 2021

Rinku Jalansingh Thakur,
Age : 27 yrs, Occu: Nil,
R/at : Katkariwadi Stable, Kandali,
Sumit Dairy Farm House, Tal. Bhiwandi,
Native :- Amaghad, Post :- Hatiyagani,
Tal. Boriban, Dist. Katani, M.P.
(Detained at Adharwadi
Central Prison, Kalyan, Thane)

...Appellant
(Orig. Accused)

Versus

The State of Maharashtra

...Respondents
(Orig. Complainant)

Mr. Amey Deshpande a/w Mr. Harsh Nishar, Ms. Niyati Sontakke &
Ms. Vandana Bait for the Appellant

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent-State

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
MONDAY, 18th JULY 2022**

JUDGMENT (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the parties.

2 By this appeal preferred under Section 374 of the Criminal Procedure Code, the appellant has impugned the judgment and order dated 2nd July 2020 passed by the learned District Judge-9 and Additional Sessions Judge, Thane, in Sessions Case No. **69/2013**, convicting and sentencing him as under :

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer imprisonment for life and to pay a fine of Rs.25,000/-, in default of payment of fine, to undergo rigorous imprisonment for one year.

3 A few facts as are necessary to decide the appeal, are as under :

According to the informant-Rajendra alias Munna Ram Singh (PW 5), his son-Vivek was working as a labourer in a stable of Sumit Dairy Farm House at Village Kandali, Taluka Bhiwandi, District

Thane, owned by one Ashok Naval; that as Vivek wanted to go to their native place, he (informant-Rajendra) joined the duty, in place of his son, on 6th August 2013. It is alleged by the informant that on 18th September 2013 at 9:30 a.m, he alongwith his co-workers Jaharsingh, Manohar and Kamlesh, after finishing their work at the stable, went to meet their employer Ashok Naval at his residence, to collect their salaries, however, as their employer was sleeping, they returned back to the stable at around 11:30 a.m. While going to the residence of Ashok Naval, they saw that the watchman of the farm-Badri (deceased) was sitting near a stove in the open place of the stable and the appellant was sitting in front of Badri on a mat; that when they returned to the stable, they saw the appellant standing, with a sickle in his hand, abusing and assaulting the deceased on his neck, throat and face, with the sickle in his hand. Pursuant thereto, Badri fell on the ground and started bleeding. On seeing the same, the informant-Rajendra alongwith his co-workers rushed towards the house of their owner-Ashok Naval and narrated the incident to him. The appellant also reached there and confessed before the owner that he had

assaulted and killed the deceased. According to the informant, the appellant's clothes were stained with blood. The appellant is also alleged to have told the owner to hand him over to the police and that he would not run away from the spot. On being asked as to why he killed Badri, the appellant told the owner that Badri used to abuse him and that in a fit of anger, the appellant assaulted the deceased with a sickle. Thereafter, all of them proceeded to the spot, where they saw Badri lying dead in a pool of blood.

Accordingly, the complainant lodged an FIR as against the appellant for the offence punishable under Section 302 of the Indian Penal Code. After investigation, charge-sheet was filed in the said case in the Court of the learned Judicial Magistrate First Class, Bhiwandi. Since the offence was one under Section 302 of the Indian Penal Code, the case was committed to the Court of Sessions, for trial.

Charge was framed as against the appellant, to which he pleaded not guilty and claimed to be tried. The defence of the appellant was that of total denial and false implication.

4 The prosecution examined 9 witnesses in support of its case. PW 1-Pravin Dharade (Panch to Spot Panchnama and Inquest Panchnama), PW 2-Prasad Godle (Panch to Seizure Panchnama of Sickie), PW 3-Ramesh Waghe (Witness), PW 4-Jagan Waghe (Witness), PW 5-Rajendra @ Munna Ram Singh (Informant), PW 6-Dr. Sangita Vishwanath Makode (Medical Officer, who conducted post-mortem of the dead body), PW 7-Kaluram Shankar Pawar (Panch to the Seizure Panchnama of clothes of the deceased and the appellant), PW 8-Gajanan Shantaram Desle (Photographer), PW 9-Shyamrao Gurudas Kale (Investigating Officer).

5 The learned Judge, after considering the evidence on record, convicted and sentenced the appellant as stated in para 2 hereinabove.

6 For the reasons set out hereinunder, we find that the prosecution has proved its case as against the appellant beyond all reasonable doubts.

7 A perusal of the evidence of PW 5-Rajendra shows that he was working as a labourer in the cattle shed of Sumit Dairy Farm at the relevant time. The other labourers working with him were Jaharsingh, Manohar, Kamlesh, Shankar, the deceased-Badri and the appellant-Rinku; that Badri (deceased) was working as a watchman, whereas, the appellant was one of the labourers working in the cattle shed. According to PW 5-Rajendra, there used to be quarrel between the appellant and the deceased. PW 5-Rajendra has further stated in his evidence that on 18th September 2013 at about 10:00 a.m, he alongwith Jaharsingh and Kamlesh had gone to the house of the owner of the Dairy to bring money for daily expenses; that the owner of the dairy was sleeping and hence they returned back to the cattle shed; that they saw Badri sitting near a fireplace situated on one side of the cattle shed and the accused sitting at some distance; that they saw the appellant going towards Badri and assaulting him with sickle on his neck, face and head. Pursuant thereto, PW 5 – Rajendra, alongwith other labourers, rushed to the house of the owner of the Dairy Farm

and narrated the incident to him. The appellant is also stated to have come to the house of the owner of the Dairy Farm. According to PW 5-Rajendra, the appellant disclosed to the owner in their presence that he committed the murder of one Badri as Badri would abuse him. The appellant's clothes were stated to be blood-stained. Pursuant thereto, the police was called and the said witness alongwith others, including the owner of the Dairy Farm went to the spot, where they found Badri lying in a pool of blood. Pursuant thereto, the police took the appellant to the police station. Accordingly, PW 5-Rajendra lodged an FIR as against the appellant. The said witness, in his evidence, has identified the sickle, with which, Badri was assaulted.

8 In his cross-examination, PW 5-Rajendra has denied that he was related to Badri. He has further in his cross, stated that he and the other labourers did not intervene in the said assault, as they were frightened. It is pertinent to note that there is no cross-examination of the said witness with respect to the extra judicial confession made by the appellant to the owner in the presence of PW 5-Rajendra.

9 The fact that Badri died a homicidal death, is not disputed. As is evident from the evidence of PW 6- Dr. Sangita Makode, she found 6 external injuries on the person of the deceased. The cause of death is stated to be “death due to hemorrhagic shock due to massive hemorrhagic from grievous neck injury”. She has stated that the injuries mentioned in Column 17 of the post-mortem report was sufficient, in the ordinary course of nature, to cause death. She has further deposed that injuries mentioned in Column 17 could be caused by the sickle shown to her.

10 The aforesaid evidence of PW 5-Rajendra is corroborated by the evidence of PW 1-Pravin Dharade. The said witness i.e. PW 1-Pravin, in his examination-in-chief has stated that he knew the workers who were working in Sumit Dairy as, he too was working in the same Dairy for about 3 to 4 years, prior to the date of the incident. He has stated that on 18th September 2013, the appellant had come to him and borrowed a sickle for cutting wood and that, at about 11:30 a.m, he heard shouts from the Dairy Farm, which is situated at a distance of

about 100 feet away from his house, pursuant to which, he rushed alongwith others, to see what had happened. He has further stated that on reaching the spot, he saw the dead body of the deceased. He has stated that the appellant was held by some persons at the spot, after which, the appellant was taken to the house of the owner of the Dairy Farm. The said witness has identified the sickle, which was stained with blood.

11 Nothing significant has come in the cross-examination of the said witness to disbelieve his testimony. It appears that the sickle that was seized, was stained with human blood, although the blood group was inconclusive. The clothes of the appellant were also found to be blood-stained.

12 Having regard to the overall evidence as stated aforesaid i.e. the evidence of PW 5-Rajendra, an eye-witness to the incident of assault by the appellant on the deceased, the extra judicial confession and the borrowing of the sickle by the appellant from PW 1-Pravin on

the date of the incident and finding of blood-stained clothes of the appellant, clearly show his complicity in the crime.

13 Although learned counsel for the appellant submitted that the appellant had assaulted the deceased due to grave and sudden provocation, warranting a lesser sentence, there is nothing on record to indicate the nature of quarrel or the provocation offered by the deceased Badri. No such defence was taken by the appellant nor has he disclosed the same in his Section 313 statement. In the absence of any evidence with respect to the same, the question of converting the offence of Section 302 to a lesser offence, does not arise. Accordingly, we do not find any infirmity in the impugned judgment and order dated 2nd July 2020 passed by the learned District Judge-9 and Additional Sessions Judge, Thane, in Sessions Case No. **69/2013**, convicting and sentencing the appellant as stated aforesaid. The appeal is accordingly dismissed.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.